RELEASE IN FULL
2000

24 November, 1998

Memo for the Record

Subject: JFK Records Review - Lessons Learned

The CIA's JFK Collection is made up primarily of records pulled together for the Warren Commission, House Select Committee on Assassinations (HSCA) and the Assassinations Records Review Board (ARRB). It contains a significant amount of duplication and non-JFK related material. The current index is flawed and contains gaps. Release standards were liberal; basically only source identities and information, names of agents, employees under cover, Agency locations and foreign liaison activities were redacted. There is no evidence in the Collection to indicate that the Warren Commission conclusions were wrong.

I. The JFK Act

Mandated review and declassification projects can be two-edged swords. The JFK Act forced the Agency to review records that should have been opened years ago. The legal requirement to presume release, backed up by an independent review, resulted in the opening of documents that clearly would not have been released under other programs. However, the Act and the Review Board created by the Act imposed unrealistic deadlines, inflexible standards and procedures which created a major drain on all Agency review resources and had an over-all negative effect on the Agency's release program.

Unrealistic Deadlines: The release dates set by the Act did not take into account the start-up time and costs (searches, inventorying and indexing) of a project of this magnitude, nor the time it would then take for a page-by-page review and sanitization of classified documents. For example, initial indexing of the collection was done on a crash basis using overtime employees and resulted in a flawed database. The revising, re-indexing and updating of that database took several thousand man-hours and continues today.

Mandated Procedures: NARA's and ARRB's interpretation of the law created a time-consuming, labor-intensive review process that meant an inordinate amount of time was spent by both the Agency and Board staff on issues which were marginal to the story and to processing decisions by the Board. For example:

a. Under the JFK Act every piece of paper in the collection was considered a "unique" assassination record. The result is a staggering amount of chaff and duplication.

For example, one cable was files and processed 58 times in the collection.

b. The ARRB required that all sanitized documents be reviewed by the Board and that each postponement (deletion) be acted on individually. Even after the Board changed procedures and accepted staff recommendations instead of reviewing each document, the detailed tracking, recording and coding of every deletion within each document required processing resources well beyond what would be considered reasonable for such a project. A most sanitized documents contained multiple deletions (one contained more than 1600 deletions and many over 100).

Inflexible Standards: The level of evidence required by the Board to postpone what was generally considered protectable information was extremely high and usually required docmentation of "current harm". Defenses based on general principles such as official cover or sources and methods were not acceptable. This required the Agency to dedicate significant resources to prepare evidence to support recommended postponements. Again, much time was spent on issues that were marginal to the JFK story. For example, several major evidence packages involving several offices and presentations by senior agency officers and officials were needed to secure Board agreement to protect Agency physical locations and names of employees and other persons not related to the JFK story.

Three times during the six years of the project, including most of this past year, the JFK review effectively shut down all other aspects of the Historical Review Program and had to borrow additional resources from other offices and review projects to meet deadlines. The JFK review will continue to require a significant portion of HRP's resources through FY99.

II. The Process

There are a number of basic lessons from the JFK review that are applicable to other historical/systematic review projects:

* We need reviewers with broad Agency experience, which can be either managerial or substantive.

* We need to establish early on what information is already in the public domain and address the issue of "official release" in the context of each project.

* Develop a strategy/policy with the IROs concerning the release of information. Be smart about it; do not accept stonewalling by them on relevant information that can be

released. At the same time, avoid confrontations with them on marginal or non-relevant information.

* On-site Directorate reviewers are the most effective way to handle the internal coordination requirements of a large project. Without the DO's JFK team on site it would have been impossible to complete the JFK project.

* Develop guidelines and processes for coordinating Third Agency documents; include other agencies in discussions; do not drop documents into the black hole of other agencies' FOIA offices without this advance discussion.

* Maintain written, up-to-date, project-specific declassification guidelines. This is no small task. A "declassification guide" must be flexible; no guide can anticipate all the issues which will arise in a review. After six years, we were still revising the JFK guidelines in the last month of the project.

* In establishing deadlines, allow sufficient time to do a thorough, professional job as required by the project activities (see Unrealistic Deadlines above).

* Ensure we have adequate support people for routine processing tasks; declassification involves both tough substantive analysis--and a lot of routine processing.

* If possible, inventory/index all materials before the review and processing begins. Experienced indexers are a must. Identification of duplicate documents should be a key part of any inventory or index.

III The Requests

(being drafted)

Attachment I. [incomplete draft attached]

Description of the JFK Collection

Attachment II. [being drafted]

[statistical summary of collection including size and status of documents (RIFs, SANs, DIFs, NBR, etc.)]

13-00000

CIA SPECIAL COLLECTIONS
RELEASE IN FULL
2000

DRAFT

12 December, 1998

Memo for the Record

Subject: JFK Records Review Project and Lessons Learned

The CIA's JFK Collection is made up primarily of records pulled together for the Warren Commission, House Select Committee on Assassinations (HSCA) and the Assassinations Records Review Board (ARRB). It contains a significant amount of duplication and non-JFK related material. The current index is flawed and contains gaps. Release standards were liberal; basically only source identities and information, names of agents, employees under cover, Agency locations and foreign liaison activities were redacted. There is no evidence in the Collection to indicate that the Warren Commission conclusions were wrong.

I. Background (1992-1995)

The setting up of the Historical Review Program by DCI Gates in early 1992 coincided with growing interest in Congress to require federal agencies to declassify records related to the assassination of President Kennedy. DCI Gates decided to start declassification process before Congress passed legislation:

* testified before Congress on 12 May 1992 about CIA`s new openness policy and announced the declassification of the first folder of Oswald's 201 (also known as the pre-assassination file).

* six boxes of the Oswald's 201 were reviewed and transferred to NARA by Oct. 1992.

The John F. Kennedy Assassination Records Collection Act of 1992 (JFK Act) was signed 26 October 1992:

* it called for Presidential-appointed Assassination Records Review Board composed of non-government individuals;

* established "a presumption of immediate disclosure" for records relating to the assassination.

For first two years of its existence, the Historical Review Program focused primarily on the review of JFK assassination records:

* there were two major releases of Agency records (August 1993 and August 1994)of approximately 227,000 pages;

* joint HRG/DO teams reviewed additional assassination related collections at National Archives (Warren Commission), the SSCI (Church Committee and the Ford Presidential Library (Rockefellow Commission) plus numerous referrals from other federal agencies (FBI, State, Army, etc.).

Due to delays in the appointment of its members and the time required to hire and clear a staff, the ARRB did not actually begin reviewing documents until May 1995. It became clear in immediately that the ARRB would require the release of far more information than the Agency had released in the 1992-94 review. In mid-1995 HRG began a re-review of the previously released sanitized documents:

* approximately 80% of the 227, 000 pages release in 1993-94 contained deletions

* resources were taken from other projects and added to JFK project to meet Board's monthly deadlines.

II. The JFK Act and the ARRB

Mandated review and declassification projects can be two-edged swords. The JFK Act forced the Agency to review records that should have been opened years ago. The legal requirement to presume release, backed up by an independent review, resulted in the opening of documents that clearly would not have been released under other programs. However, the Act and the Review Board created by the Act imposed unrealistic deadlines, inflexible standards and procedures which created a major drain on all Agency review resources and had an over-all negative effect on the Agency's release program.

<u>Unrealistic Deadlines</u>: The release dates set by the Act did not take into account the start-up time and costs (searches, inventorying and indexing) of a project of this magnitude, nor the time it would then take for a page-by-page review and sanitization of classified documents. For example, initial indexing of the collection was done on a crash basis using overtime employees and resulted in a flawed database. The revising, re-indexing and updating of that database took several thousand man-hours and continues today.

<u>Mandated Procedures</u>: NARA's and ARRB's interpretation of the law created a time-consuming, labor-intensive review process that meant an inordinate amount of time was spent by

both the Agency and Board staff on issues which were marginal to the story and to processing decisions by the Board. For example:

a. Under the JFK Act every piece of paper in the collection was considered a "unique" assassination record. The result is a staggering amount of chaff and duplication. For example, one cable was files and processed 58 times in the collection.

b. The ARRB required that all sanitized documents be reviewed by the Board and that each postponement (deletion) be acted on individually. Even after the Board changed procedures and accepted staff recommendations instead of reviewing each document, the detailed tracking, recording and coding of every deletion within each document required processing resources well beyond what would be considered reasonable for such a project. A most sanitized documents contained multiple deletions (one contained more than 1600 deletions and many over 100).

<u>Inflexible Standards</u>: The level of evidence required by the Board to postpone what was generally considered protectable information was extremely high and usually required documentation of "current harm". Defenses based on general principles such as official cover or sources and methods were not acceptable. This required the Agency to dedicate significant resources to prepare evidence to support recommended postponements. Again, much time was spent on issues that were marginal to the JFK story. For example, several major evidence packages involving several offices and presentations by senior agency officers and officials were needed to secure Board agreement to protect Agency physical locations and names of employees and other persons not related to the JFK story.

Three times during the six years of the project, including most of this past year, the JFK review effectively shut down all other aspects of the Historical Review Program and had to borrow additional resources from other offices and review projects to meet deadlines. The JFK review will continue to require a significant portion of HRP's resources through FY99.

III. The Process and Lessons Learned

There are a number of basic lessons from the JFK review that are applicable to other historical/systematic review projects:

* We need reviewers with broad Agency experience, which can be either managerial or substantive.

13-00000

* We need to establish early on what information is already in the public domain and address the issue of "official release" in the context of each project.

* Develop a strategy/policy with the IROs concerning the release of information. Be smart about it; do not accept stonewalling by them on <u>relevant</u> information that can be released. At the same time, avoid confrontations with them on marginal or non-relevant information.

* On-site Directorate reviewers are the most effective way to handle the internal coordination requirements of a large project. Without the DO's JFK team on site it would have been impossible to complete the JFK project.

* Develop guidelines and processes for coordinating Third Agency documents; include other agencies in discussions; do not drop documents into the black hole of other agencies' FOIA offices without this advance discussion.

* Maintain written, up-to-date, project-specific declassification guidelines. This is no small task. A "declassification guide" must be flexible; no guide can anticipate all the issues which will arise in a review. After six years, we were still revising the JFK guidelines in the last month of the project.

* In establishing deadlines, allow sufficient time to do a thorough, professional job as required by the project activities (see Unrealistic Deadlines above).

* Ensure we have adequate support people for routine processing tasks; declassification involves both tough substantive analysis--and a lot of routine processing.

* If possible, inventory/index all materials before the review and processing begins. Experienced indexers are a must. Identification of duplicate documents should be a key part of any inventory or index.

IV ARRB Requests for Additional Information and Records

(see attached draft)

Attachment I. Description of the JFK Collection

Attachment II. [being drafted-will be available 17 Dec a.m.]

[statistical summary of collection including size and status of documents (RIFs, SANs, DIFs, NBR, etc.)]

13-00000

9: irg - hrp
"reg. doc"

DRAFT: Section ~~III~~ IV, ARRB Requests for Additional Information and Records

1. Unlike most declassification projects, the Agency's involvement in the JFK Project was governed by the dictates of a Federal statute, the JFK Act, and the powers it vested in the Board it established -- the Assassination Records Review Board (ARRB). In particular, under Section 7, the Act armed the ARRB with the authority to dig for records and information, specifically:

> ...(1) The Review Board shall have the authority to act in a manner prescribed under this Act, including authority to --
>
> * * *
>
> (C)(ii) direct a Government office to make available to the Review Board, and if necessary investigate the facts surrounding, additional information, records, or testimony from individuals, which the Review Board has reason to believe is required to fulfill its functions and responsibilities;
>
> * * *
>
> (F) hold hearings, administer oaths, and subpoena witnesses and documents.

This substantial authority provided the ARRB and its staff with almost unlimited access to Agency records and personnel. It also was the basis for a number of specific requests from the Board to the Agency for additional information, document searches and explanatory papers. HRP designated this ARRB activity, "Special Requests." During its existence the ARRB sent to the Agency fifty-three special requests, CIA 1-16 and CIA-IR 1-37.

2. <u>Categories of Requests</u>:

Although each request had unique characteristics, all began as a request by the Board or an ARRB staff member on behalf of the board for information. The requests fell generally into five broad categories as follows:

a. Requests for **access** to basic information which would help the board understand the CIA, its organizational structure and how it operated around the time of the assassination which included: Requests for organizational charts, briefings, mission statements, etc.; review of over ___ histories of CIA offices and projects; a review of the so-called "Breckinridge files;" and, a search for an IG index of Oswald reports.

b. Requests about **methodologies** which included: How cable traffic was handled at HQ during the relevant time period; the existence and use of the inter-agency source registry; and, the assignment and use of alias's pseudonyms, crypts, etc.

c. Requests for **subject specific** matters which included: The Mexico City Station annual reports; the existence of DRE monthly reports; Oswald's pre assassination files; and, a search for any documents or information detailing the Agency's involvement in transporting and processing the Zapruder film.

d. Requests for **project specific** information and files, which included: Requests for information and files on AMWORLD, QKENCHANT, an index to the HTLINGUAL materials, and the Mexico City electronic surveillance tapes.

e. Requests for **individual specific** information and files, which included both CIA and CIA associated individuals and non-CIA individuals: Information on individuals with JMWORLD; detailed information on Sylvia Duran; a determination of the identify of a particular "George Bush;" and, the files on William Pawley.

3. <u>How a Request was Worked</u> Following receipt of a request and HRP tasking the responsible Agency component(s) to conduct a search, the materials found were first reviewed by HRP staff members before access was provided to the ARRB staff. ARRB staff then reviewed the documents and materials and identified those which it believed were relevant to their inquiry and these materials were placed in the normal queue to be reviewed and processed for release. However, the mere identification of materials did not equate to automatic release. Rather, if particularly sensitive information was involved, negotiations took place and, on occasion, a written statement about the materials was provided for release vice the actual document(s).

4. The Agency's written responses to each request - either a letter or memoranda - included, of course, the fact the materials designated were to be processed for release according to then current guidelines. The ARRB staff then wrote its own version of the request, search, and response. Both of these are a part of the public record on this project.

5. <u>Lessons learned</u>: A number of things surfaced as HRP worked to complete these requests which required considerable explanation, negotiation, and resolution.

a. First among these was the fact there existed an outside Board which asked for information and carefully monitored the responses (a very powerful external Board with subpoena authority), without doubt caused documents and information to be found and made available that would not have been provided to an internal declassification project.

b. Second, for any large project such as JFK to be successful, there is an absolute requirement that each directorate and independent office identify two responsible persons -- a senior management official who can ensure that deadlines (particularly deadlines established by an external

authority) are met; and, a senior focal point officer, who has the substantive knowledge and background to both locate all relevant material and make decisions on its sensitivity.

c. Third, the individuals identified and appointed in sub-paragraph "b" next above must be fully versed in the guidelines which pertain to each specific project. They cannot rely on FOIA or other guidelines as to the depth of their searches or the conditions governing release/redaction/denial of materials.

ATTACHMENT #1

CIA'S JFK ASSASSINATION RECORD COLLECTION

Oswald Files

Pre-assassination "201" file --approximately 40 documents that existed at the time of the assassination. Released in 1992 with minimal deletions.

DO 201 File (Approximately 26,000 pages): Agency's primary file for documents dealing with the assassination or mentioning Oswald; the file is still active. Contains pre-assassination documents; materials collected after the assassination and during the Warren Commission investigation; Mexico City files, Garrison investigation materials plus other documents related to the assassination or Oswald received over the years. A microfilm copy of file, as it existed in 1978, was sequestered by the House Select Committee on Assassination (HSCA).

The DO's original (record copy) 201 was transferred to HRG in early 1992; a declassified version was released in August 1993; it was re-released with fewer deletions in 1996 under the authority of the ARRB . Additional documents, filed into the 201 after the its transfer to HRG, were released in September 1998.

Office of Security File (2041 pages): Contained key Oswald documents, FBI investigative reports, newspaper clippings. This file, primarily duplicative of the 201, was reviewed by the HSCA, but a copy was not sequestered with the rest of the Agency's "JFK" collection. The file surfaced as a result of an ARRB request in 1997. A declassified version of the file was released in 1998.

DCD "A" File (41 pages): A microfilm copy of this Oswald file was in the sequestered collection. The ARRB requested that the original file by reviewed for release.

Marina Oswald's 201 file. A copy of this file from the sequestered microfilm collection was reviewed and released in 1994. The ARRB requested that the original file be reviewed for release by September 1999.

The ARRB directed that the classified originals of all documents from the Oswald files be transferred to NARA for secure storage. These documents were transferred to NARA in October 1998.

The Sequestered Collection

At the end of its investigation, the HSCA directed that all materials (files, documents, memos, notes, tapes, etc.) collected or prepared in response to its investigation be sequestered. This included files made available for review, but not reviewed by the HSCA staff.

JFK boxes 1-63 (hardcopy): These boxes are the core of the Agency's JFK collection. They are the working files/materials of the HSCA staff and reflects the wide range of issues pursued by the Committee. In addition to Agency documents, they include

approximately 30,000 pages of notes, letters and memos created by the HSCA or its staff. The boxes are a combination of files on subjects and persons of interest to HSCA including documents prepared by the Agency as a result of the investigation, eight boxes of security files and Mexico City cable chrono files. The boxes contain a significant amount of duplication (most of the Oswald 201 documents appear multiple times in this part of the collection). A declassified version was released in August 1993, then re-released under ARRB in 1997.

JFK Microfilm (72 reels): These reels are copies of Agency files that were made available to HSCA staff. Although the HSCA interest usually focused on a small portion of a file, the Committee sequestered the complete file. The microfilm includes approximately 25 reels of 201 files, 6 reels of Office of Personnel files, 14 reels of Anti/Castro - Cuban exile material, extensive files on Nosenko and operational and production files from Mexico City. The microfilm also contains copies of all the Oswald files except for the security file.

DCI Morning Meeting Minutes

This file contain 442 excerpts from the minutes of the DCI's Morning Meetings that refer to JFK assassination and related issues and investigations. The initial search for the minutes was in response to an FOIA. The material was turned over to HRG in 1993 for review and inclusion into the Collection.

Russ Holmes' Working Files (19 boxes)

Russ Holmes was a DO officer initially assigned to work on JFK assassination records in the mid-70s. He was one of the Agency's liaison officers with the HSCA during its investigation and subsequently became custodian of HSCA sequestered collection . He continued in this role until 1992.

As the focal point for JFK related requests, Russ Holmes created a JFK reference file know as the "Ancillary Collection" (13 boxes). The contents are primarily duplicative (approximately 80%) of material found in Oswald's 201 and in the sequestered collection, but organized by subjects and requests. The collection contains some non-related material reflecting Holmes' involvement in other FOIA, etc. requests. There were an additional six boxes of unorganized reference material and files from his office transferred to HRG when he retired. These 19 boxes became know as the "Russ Holmes Working Files" and were declared assassination records as a collection by the ARRB. Non-duplicative records from this collection were released in September 1998. The duplicative material is currently being reviewed and will be transferred to NARA in early January 1999.

LA Division JFK Task Force Files

The survey undertaken in response to Executive Order ##### located seven boxes of DO Latin American Division continuing JFK Task Force files and related Cuban material. The ARRB staff reviewed the boxes; the non-duplicative JFK Task Force

documents and selected documents from the Cuban material were designated as assassination records. 1637 pages from these boxes were transferred to NARA in October 1998.

New assassination Records -- "M" [Miscellaneous] Series

The ARRB submitted 53 numbered "Requests for Additional Information and Records" (CIA-# and CIA-IR-# series) plus many informal requests on individuals and subjects in their search for additional assassination records. Theses requests generated several 100 additional assassination records including 185 audio tapes from the Mexico City telephone taps. Additional material related to the JFK Act including DO cables to the field and working files of the HRP project officer were declared assassination records in the final actions of the Board. Over 4500 pages and 17 tapes have been reviewed and prepared for transfer to NARA. The remaining records and tapes are scheduled for completion by September 1999,.

CIA SPECIAL COLLECTIONS
RELEASE IN FULL
2000

JFK Assassination Records Collection Act

- Five year Effort; Estimated 100 person years expended
- Extraordinary Authorities/ Access/ "non Precedent Setting Releases"
- Processed over 14,000 CIA documents upon which the Board took direct action.
- Transferred to the National Archives over 100,000 redacted pages for the JFK Collection.
- Prepared a Declaration of Compliance with the Act, with a detailed accounting of CIA actions in response to the Board's requests.
- Negotiated a detailed Memorandum of Agreement among CIA, the JFK Board and the National Archives regarding the disposition and processing of all documents resulting from the five year review.
- "The Review Board considered the CIA's compliance with the JFK Act....to be one of [the Board's] highest priorities." It is particularly significant that the board fully accepted the Agency's Declaration of Compliance and reported favorably on the Agency's activities in response to the Board.

6

During FY 1998, compliance with the legal requirements of the JFK Act absorbed the preponderant portion of HRP resources. HRP completed necessary coordination with the JFK Assassination Records Review Board on behalf of the Agency, an ongoing process since FY 1994. HRP provided a central Agency focus for a process which:

Coordinated with Board Staff on relevancy and classification on roughly 250,000 pages (many duplicates)

Processed over 14,000 CIA documents upon which the Board took direct action.

Transferred to the National Archives over 100,000 redacted pages for the JFK Collection.

Prepared CIA's Declaration of Compliance with the Act, a detailed accounting of CIA actions in response to the Boards requests.

Negotiated a detailed Memorandum of Agreement among CIA, the JFK Board and the National Archives regarding the disposition and processing of all documents resulting from the five year review.

The Board's report of 30 September 1998 states that "The Review Board considered the CIA's compliance with the JFK Act....to be one of [the Board's] highest priorities." It is particularly significant that the board fully accepted the Agency's Declaration of Compliance and reported favorably on the Agency's activities in response to the Board.

JFK Act -- Process

- Scope/Deadlines/Decisions defined by law and outside Board.
- Focal Point (HRP) Serves Primarily as: (1) Moderator between Board and Components, (2) Bookkeeper, (3) Consistency Keeper.
- Everything reviewed by Focal Point (HRP) and the appropriate component (Often many times).
- Components often take strong initial position but recede in face of strong arguments.
- Senior Agency Managers unaware of intricacies of the Process unless problems come up.
- Exceptions: Issues Taken to Board by senior management: Cover, Employee Names, Facilities Stations.

7

Without making a value judgment on the merits of the JFK Act, it is possible to characterize the process which the Act dictated for CIA.

The scope/deadlines and decisons were defined in the law and by the Assassination Records Review Board, an outside body. Over the course of the history of this effort (5 years), CIA, as did other agencies, developed (and redeveloped) processes and responses to the Board. For the most part the detailed work by the Staff was at a level which did not involve senior managers unless a major problem arose.

When problems did arise, Senior Agency officials were asked to make presentations to the Board and, in all cases, consensus was achieved. No issues from CIA had to be appealed to the President, the formal procedure in the Act for resolving differences between Agencies and the Board.

JFK Lessons Learned

- Statutory Mandates are Not Efficient
  - Requirements to declassify All drives out focus on important
  - Standards for Declassification are Invariably Different
  - Projects of equal merit without a statute are orphaned
- Structure and Planning
  - Good Communications with Oversight Body
  - Expertise in Subject matter and Information Management
  - Strategy, Concepts and Policy known and Understood:
    - Guidelines (flexible),
    - Deadlines (reasonable),
    - Responsibilities
  - Understanding of Final Product Desired:
    - Media, Databases, indexes, etc.
- Support of Senior Management

8

- Our experience is that statutory mandates such as the JFK Act are very inefficient. The specific requirements of the act, including Board administrative decisions, required us to :
  - Address all possibly related documents, no matter how insignificant.
  - Engage in lengthy negotiation processes over an almost endless number of documents.
  - Establish databases for management of the documents and workflow
  - Treat documents in ways different from all other release programs.
  - Postpone plans for systematic declassification on other programs ~~for which we had no~~ that did not have the benefit of a legal mandate.
- Our expectation is that there will be more of such mandates, including the recently enacted Nazi War Crimes Disclosure Act. Similar proposals are under consideration for human rights violations in central america. What we have learned from our JFK experience is that:
  - We need to remain in very close coordination with the Oversight body to assure that we are not going down the wrong street and will have to repeat efforts.
  - We have found that annuitants "who know the territory" can be extremely valuable as a resource for finding and understanding the senstitivity of material.
  - We know that we have to organize within the Agency and to gain agreement early on with regard to strategies for managing the effort, including agreement on what the final product is to be and how we are to get there.
  - We also need to keep senior management attention on what we are doing so that they are not surprised at the end, which not only causes delays in an orderly process but can lead to significant misunderstandings between senior participants.
- We are trying to apply these lessons learned to our planning for the Nazi War Crimes Disclosure Act.

SECRET

OIM 99-0281
29 October 1999

MEMORANDUM FOR: Chief, Information Review Group, OIM

FROM: Charles A. Briggs
JFK Declassification Project, OIM

SUBJECT: The JFK Declassification Experience

1. My assumption in preparing the attached is that I was asked because: a) for seven-plus years I've been involved in the project; and b) my past Agency assignments, including being the first DO Information Review Officer, gave me the opportunity to see declassification from many vantage points: from a legalistic directorate-oriented, either-or standpoint (taking full advantage of allowed exemptions), to a "corporate" Agency-wide strategy to foster credibility while protecting secrets that should remain secret. My comments and conclusions reflect that experience and do not necessarily reflect the views of HRP management.

2. Historically, the Deputy Directors have not paid much attention to information management - unless there's a problem. Then the approach has been: what went wrong; who's to blame; how can we ensure that this doesn't happen again; what lessons have we learned? What this JFK experience reiterates is the need for a proactive, not just reactive, flexible strategy, with corporate Agency direction through the Deputies to their Information Review Officers. And the IROs, who, in essence, determine credibility and resource impact, should be supergrades, with experience in at least two directorates. Because information release has become a major management issue, the Executive Director is the obvious officer to ensure consistent and informed implementation of release policy.

AIUO When Separated
from Attachments

CL BY: 0611637
CL REASON: 1.5(d)
DECL ON: X5
DRV FRM: LIA 2-82

SECRET

SECRET

SUBJECT: THE JFK DECLASSIFICATION EXPERIENCE

3. Considerable skepticism in the public, the media, and, unfortunately, the Congress results from the in-house conclusion that denial is justifiable in the absence of "official acknowledgment" of Executive Branch information, even though such information is already in the public domain, from senior Agency officials' publications, Congressional investigations, books by former Cabinet-level NSC members, even Presidents. This inflexible legal strategy may win the battle and lose the war. Lawsuits are a lot more expensive than negotiation.

4. The Agency Task Force that in 1992 considered some of the aspects of DCI Gates' "openness" philosophy did not have the benefit of the JFK experience. I suggest that a senior-level panel be established to consider an objective look at the need for continued classification of generic versus specific sources and methods information, particularly that already in the public domain and when dealing with matters of high public or historic interest. HR 70-14, referring as it does in paragraph e.(4) to "Guidelines for Declassification" in Executive Order 12356, does not promote the tactical approach which is suggested in the Comments section on page eight of the attached.

Charles A. Briggs

SECRET

13-00000

SUBJECT: THE JFK DECLASSIFICATION EXPERIENCE

DA/OIM/IRG/SCD/CABriggs:bkh/31835 (29 Oct 99)
s:/oim/fo/jim/hrp/jfk/C.B. JFK Declass Exp.doc

Distribution:
Original - Addressee, w/atts
1 - C/IRG/SCD, w/atts
1 - IRG/SCD/HRO, w/atts (Harrelson)
1 - SCD Chrono, w/atts
1 - SCD Subj, w/atts

13-00000

OIM 99-0282
29 October 1999

MEMORANDUM FOR: Chief, Information Review Group, OIM

FROM: Charles A. Briggs
JFK Declassification Project, OIM

SUBJECT: The JFK Declassification Experience

1. (AIUO) BACKGROUND: The impact of the JFK declassification law on Agency resources and information release decisions was dramatic and to the DO, traumatic. The resource trauma stemmed from the unanticipated number of years required to complete the project. In a memorandum for the DCI dated 11 June 1993, the then-Director of the Center for the Study of Intelligence outlined a plan for implementing the "openness philosophy" espoused by both DCIs Gates and Woolsey through a series of "Cold War Declassification" projects. He noted that priority, by virtue of a Congressionally-mandated deadline of 22 August 1993, had been given to declassification of the JFK collection; however, he said, "with the end of the JFK activity in sight," resources could be applied to the other projects. Six years later (actually seven since the project got underway), we are almost finished.

2. (AIUO) The substantive, versus administrative, trauma stemmed from the fact that the JFK Act superseded all other existing laws, including FOIA, the Privacy Act, the DCI's authorities, as well as Executive Orders and Regulations.[1] The Act presumed release. It did allow for appeal but only to the President from the DCI. It allowed "postponements" but only if clear and convincing evidence was presented for each requested postponement and that release would demonstrably impair the national security. The net effect was the release of names, crypts, pseudos, methods, station locations (within specified dates), file identifier numbers, and tradecraft generally, which are protectable under the other laws - and which the Agency had

[1] See OGC-92-5325, 14 Dec 92 and OGC-94-52916, 19 Sep 94 (Attachment B)

AIUO When Separated
from Attachments

CL BY: 0611637
CL REASON: 1.5(d)
DECL ON: X5
DRV FRM: LIA 2-82

learned to live with (See Appendix A for the Assassination Records Review Board (ARRB) "Standards For Review" and "Key Distinctions Between Those Under FOIA, Executive Order 12356 and the JFK Act," with examples).

3. (U) Finally, a Presidentially-appointed assassination review board (the ARRB) had the final say both on postponement and on relevance, subject only to a successful DCI appeal to the President. Although a few appeals were considered, particularly in the early period, none was made.

4. (U) The JFK Act called for each agency to review and transfer its relevant material to NARA by 22 August 1993. Thus, a significant set of materials was transferred from CIA to NARA in 1993, reflecting CIA's then-current judgment on the redactions permitted. Subsequent Board reviews and ARRB staff inquiries resulted in the addition of material to that original set of documents, as well as adjustments to the original set, to reflect Board actions - generally to release more information. Although many documents have been adjusted or added to the collection, requiring substantive HRG and DO reviews as well as administrative actions, the net number of pages in CIA's JFK Collection at NARA is about 260,000.

SIZE AND NATURE OF THE COLLECTION

5. (U) The material requiring line-by-line review included 17 boxes called the Oswald 201 File; 64 boxes called the "Segregated Collection" File, containing those documents made available to the House SubCommittee on Assassinations (HSCA) during its 1978 investigation; 23 boxes of HSCA referrals - staff notes in longhand and type, draft sections of the HSCA final report, correspondence on HSCA letterhead, trip reports - anything referred to us by the National Archives (NARA) for review of possible Agency equities; 19 boxes called "The Holmes Collection" - a reference collection used by the then-DO focal point for FOIA and other JFK queries, Russell Holmes; Presidential libraries material, Church Committee and Rockefeller Commission testimonies, National Security Council papers, PFIAB Minutes and other Community papers made available through the ARRB staff; and 13 boxes called "Miscellaneous," including follow-on questions from the ARRB, a previously overlooked Latin American Division working file, DCI calendars, some DI/OCI

"Dailies." Box 64 of the "Segregated Collection" consisted of 72 reels of microfilm of complete files from which the material reviewed by the HSCA staffers was drawn: CIA staff personnel and security files; a duplicate Oswald 201 file; 26 reels of 201 files on Cubans, Russians, and Americans linked with Oswald, the JFK assassination, and the several investigations; DO project history files, and so on.

6. (AIUO) Included were printed text, almost illegible Thermofax, photographs, computer listings, typed 3X5 cards, buckslips, routing sheets, handwritten scraps - every imaginable form of documentation, with a tremendous amount of duplication, in one instance, 54 copies of a Mexico City cable. Every one of these pieces of paper had to be handled according to NARA instructions, as a unique document for inclusion in the NARA collection for public access and with an Identification Aid for research assistance and retrieval. Among other things, the collection reflected little attention to procedures propounded by NARA itself for Records Management, including destruction of duplicate copies.

7. (AIUO) The pressure to meet an initial Congressionally-mandated release date of 22 August, 1993 with the NARA-required Research Identification Forms, resulted in a crash effort at indexing done, mainly, by individuals on loan from the directorates on an overtime basis and generally unfamiliar with the collection and the subject matter. Thus, a major factor in inconsistent redacting of multiple copies of the same document in different boxes was a function of the quality of the indexing and the effort of the reviewers to cope with constantly changing guidelines. Inadvertent release was inevitable.

THE REVIEW PROCESS

8. (AIUO) The majority of the reviewers were independent contractors with many years of experience, in some cases senior management experience in at least two directorates. Two HRG reviewers had been Information Review Officers themselves as supergrades, one in the DO, the other in the DA. After the HRG review with suggestions for release in full or with redactions, the documents went to a DO review team. The DO agreement or disagreement was reflected on each document, and the package was returned for a senior-level HRP review prior to forwarding to the ARRB.

SUBJECT: The JFK Declassification Experience

9. (AIUO) As complicated and frustrating as the process was, it wouldn't have worked at all without the on-site presence of the DO team with their link to DO/IMS and the area divisions in Headquarters. Not surprisingly, the DO Headquarters tended to use the familiar FOIA standards, under which much more information could be withheld than was defendable under the JFK law. A major part of the JFK story was Oswald's trip to Mexico City; it took several months for the DO to agree to allow acknowledgment of the existence of a station in Mexico City and many more months to release the name, pseudo, and tenure of the chief of station - information, except for the pseudo, long since in the public domain.

10. (AIUO) Another long time debate concerned acknowledgment of teltap and photo surveillance by the Mexico City Station on the Soviet and Cuban embassies and consulates - both discussed in open literature but disguised as unidentified sensitive source materials in the Warren Commission report, along with a cropped photo and transcripts of telephone conversations that came to the station from somewhere. One issue, for a long time, was acknowledging that the teltaps were station activities. The ARRB insisted on nearly total release of Mexico City Station traffic, history, personnel, and project approvals because Oswald's trip to Mexico City remained one of the most controversial conspiracy theory aspects of the JFK story. Proof of Oswald's presence there, of his contact with the Soviet and Cuban embassies and consulates, and the reasons therefore, of the station's unfamiliarity with him prior to the assassination became evident through release of the detailed information on the teltap and photo operations.

11. (AIUO) After the ARRB staff received the Agency reviewed material, discussion of the validity of the deletions (the "postponements") occurred. In the early stages there was a tendency for the Agency Information Review Officers in the directorates to deny rather than release, to test using FOIA standards until challenged, then back off. In a couple of instances, assertions were made that the information that the ARRB said should be released was so sensitive that an appeal to the President would be made - but it wasn't. The net result of the deny-until-pushed approach was an absence of credibility, leading the ARRB to include the following statement in its Final Report to the President on 30 September 1998:

SUBJECT: The JFK Declassification Experience

> "A small number of CIA staff officers, almost exclusively in the Directorate of Operations, unnecessarily impeded the process and damaged the Agency's interests by resisting compromise with all-or-nothing positions."

12. (AIUO) As time passed and both Agency and ARRB staffers became better educated in attempting the balance between the public interest and the legitimate need for secrecy, credibility improved, the ARRB members delegated the negotiation process to the staff. Previously, every postponed word, phrase, or paragraph had to the approved by the Board. Toward the end, only remaining disagreements were passed by the staff to the Board.

THE ISSUE OF RELEVANCE

13. (AIUO) The ARRB, under the law, determined relevance of file material - the Agency could not do so although it could and did, eventually quite successfully, negotiate. Because of the impact of the Oliver Stone movie "JFK," reflecting a 70-80% public view that the Warren Commission conclusion that Oswald acted on his own was wrong, the ARRB pursued all the major conspiracy theories. Thus, Agency files on the USSR's handling of American defectors, entry and departure controls on foreigners, alien employment and marriage with Soviet citizens, and, particularly, KGB interest in Oswald, and Nosenko's claim to have reviewed Oswald's KGB file in Moscow were declared relevant - as was the whole Nosenko bona fides issue. Agency contact with the Mafia to arrange for Castro's assassination, not known to the Warren Commission, were obviously relevant and, by extension, assassination as an Agency activity was considered relevant - hence, all such testimony before the Church Committee had to be reviewed. Of particular interest was the plot against Lumumba because of the involvement of the former Chief of the Technical Services Division, which division was also involved in the Castro assassination planning.

14. (U) The major conspiracy theory of interest to the Board concerned Cubans: either alleged Castro involvement because of his awareness of plotting against himself or Cuban exiles, furious with JFK for the Bay of Pigs failure. Thus, all files on Agency support to the many Cuban

exile groups and CIA involvement in Project MONGOOSE were declared relevant. Hundreds of JMWAVE cables, Mexico City Station documents, and Cuban names, and many with their crypts, were released.

15. (U) Those records that the Board concluded "truly had no apparent relevance to the assassination" were designated "not believed relevant" (NBR). Cooperative negotiation resulted in about 50,000 pages being declared NBR.

INADVERTENT RELEASES/FOREIGN LIAISON CONCERNS

16. (AIUO) As noted above, inadvertent releases were inevitable. The contributing factors included: guidelines that changed almost continuously as negotiations with the ARRB reduced the claims of current sensitivity; inaccurate and incomplete records on the cover status of retirees; an initial tendency, consistent with FOIA practices, to deny crypts but to release true names- the crypt implying an Agency relationship- if the text did not imply same. (Later: duplicate copies plus mosaic pattern analysis made linkage of some crypts and true name quite easy.); and a surge of inexperienced reviewers loaned during the closing days to meet the agreed NARA deadline for the remaining files.

17. (S) The inadvertent releases of former employees names resulted in a few individual complaints but no known foreign government or liaison service complaints. Four foreign governments opposed release of their information when queried, but no inadvertent releases were involved. (See Appendix C.) The worst slip appears to have been the name of a former NOC, living abroad, who, upon being informed, demanded and received compensation for the violation of his confidential relationship with CIA and the FBI. The other outraged former employee, also living abroad, threatened to contact the President if it became known in his adopted country that he had been CIA. His true name, on a great many documents, is the only redaction; he was of considerable interest to the Board as a key player in the HSCA investigation because he was the Mexico Branch chief and was initially appointed by the DDO to be the focal point for JFK assassination information and briefings. The HSCA allowed him to testify in alias, and the ARRB allowed the substitution of his alias wherever his true name appeared; however, the Board ruled that his true name should be

released in May 2001 or on his death if before that date. Given the volume of the documents in which his name appeared, there were inadvertent releases of his true name.

IMPACT OF THE JFK RELEASES ON FUTURE DECLASSIFICATION PROGRAMS

18. (AIUO) Whether the JFK Act is, or should be considered, precedent-establishing has been argued since its passage. It addresses a unique, highly emotional event, of obvious interest to the public; and it should serve as a catalyst for future declassification policy discussion. But it should not be considered to have set a legal precedent. What should result is what the ARRB directed in the case of exact duplicate documents: that they all be handled consistently, with the same, or no, redactions. Other documents concerning the same or a similar event, not exact duplicates but relevant to the issue, and not subject to the tight legal demands of the JFK legislation, could be reviewed in accordance with the exemptions allowed under the FOIA or the Executive Order. However, the basic factor in deciding on release or denial should not be the avoidance of embarrassment through inconsistent or inadvertent release. It should be the current need for protection of sources and methods.

19. (U) The JFK experience did demonstrate that a traditional generic sources and methods denial is not always necessary, defendable, or smart. Instead of being negatively reactive, it may well be tactically smarter to be proactive to better ensure protection of important secrets. More on that below.

20. (AIUO) LESSONS LEARNED:

- Don't cut costs on indexing. Use experienced indexers. Aim for indexing all materials before review and processing begins. A key focus should be identification of duplicate documents.

- Use retirees with broad Agency experience under staff supervision. Because the most common release problems usually involve DO material, seriously consider an on site-DO team.

SUBJECT: The JFK Declassification Experience

- Develop and keep updating written guidelines, including those for coordinating third-agency documents

- Establish early what is already in the public domain. Take a fresh look at the "official release" philosophy, particularly as concerns former DCIs, Cabinet Officers, Presidents, and Congressional investigations.

- Develop better information on the cover status of retired employees.

- Avoid confrontation on marginal or non-relevant information. Avoid stonewalling on relevant information.

- Because the Information Review Officers are the key implementers of information release policy, ensure that the guidance given them by their Deputy Directors has Agency corporate equity.

21. (AIUO) COMMENTS: Information Management, Information Warfare, Information Handling, Information Declassification: at least three of these terms have elicited groans from senior Agency management and a preference to have someone else, some staffer, deal with the subject, keeping the boss out of trouble and minimally informed. But inflexible insistence on continued classification of dated information, particularly that known to the public, ignorance of what has already been declassified and released, and counterproductive stonewalling - these factors have caused trouble and will cause more trouble as the "Information Age" matures.

22. (C) In 1976, then DDI Ed Proctor wrote to the DCI, citing "the need to rationalize the classification process." A 1977 memorandum for the Agency's Executive Committee by two of the current HRG contract reviewers urged the development of an O/DDCI level (the Executive Director position having been abolished) policy review of flap potential in information release and a computer-supported index to released documents. At various times in the 1970s, consideration was given to establishing a fifth Directorate of Information Handling. After a good bit of internal agonizing, DCI Gates in April 1992 signed off on HR 70-14 to make "significant historical information available without

damage to national security." Subsequently, a central management focal point was established in the Office of Information Management and a system that addresses part of the indexing goal and, with its mandatory declassification "metrics" (millions of pages of released documents), modulates some of the outside criticism alleging that CIA is reneging on "openness."

23. (AIUO) What is missing is a Year 2000 look at secrecy. When the FOIA law was passed and the Agency was traumatized by receipt of 150 public requests a day for information, we were able to make case law in the courts and protect sensitive sources and methods by non-arbitrary and non-capricious use of allowed exemptions. It is obvious today that a more forward-thinking strategy than the "no comment" of the 1950s and the "answer the question only as asked" of the 1970s is needed - the JFK experience demonstrated both the counterproductive result of an all-or-nothing defense and that credibility and compromise can be gained without current sensitivity loss. And the fact that Chairman Porter Goss has joined with Senator Moynihan in proposing the existence of an outside group on the model of the JFK Assassination Review Board as arbiter in the government declassification arena is a very clear signal.

24. (AIUO) In my view (and as was the case, briefly, in the past), this extremely complicated, frustrating, and ubiquitous topic requires the personal attention of the Executive Director with "corporate" Agency focused guidance to the Deputies for their personal attention and policy guidance to the IROs. And because the IROs, as the implementors of their Deputies' policies, determine the credibility and resource impact levels, they should be supergrades and experienced in at least two directorates.

25. (AIUO) The eventual development of a credible association with the JFK ARRB was a function of: (1) the patience and diplomacy of the HRP/JFK Project Officer, Barry Harrelson and (2) the presence, on site, of the DO team, without whom this exercise could not have been completed. Ironically, as is so often the case when an individual or group is between a rock and a hard place, as the DO team was between the DO desk officers, the DO/IRO, and the HRP reviewers, there were allegations of their having

SUBJECT: The JFK Declassification Experience

been co-opted. Both the DO team and HRG were seen, at times, as "the enemy." That kind of in-house idiocy needed instant quashing.

26. (AIUO) CONCLUSIONS: The JFK Project cost far too much, took far too long, produced no information to change the conclusion that Oswald acted alone. But it did make available to the public previously withheld operational material to negate what DCI Gates had called the most heinous of the conspiracy theories: that CIA was involved in the assassination of the President of the United States. The resource impact was a function of: the unique requirements of the law; the crash nature of the initial release; the National Archives decision that every duplicate must be reviewed and indexed as a unique document; less than satisfactory indexing, contributing to inadvertent releases and time wasted in checking for consistency in the handling of duplicates; problems in determining the cover status of retired employees; and stonewalling.

27. (AIUO) Although there was inconsistency and inadvertent release and some resultant retiree anger, we know of no significant national security breech. Previously withheld information from the Church Committee hearings and from the Presidential libraries declared relevant by the ARRB will be titillating and may stimulate FOIA requests, but the variance from FOIA rules was not a legal justification for withholding under the JFK law.

28. (U) If this experience leads to a serious objective look at the theory and practice of secrecy in this changed world, perhaps the cost will have been worth it.

Charles A. Briggs

Attachments:
A. Excerpt from Final Report of the ARRB (Standards)
B. OGC Memorandum
C. Foreign Government Information

SUBJECT: The JFK Declassification Experience

DA/OIM/IRG/SCD/CABriggs:bkh/31835 (29 Oct 99)
s:/oim/fo/jim/hrp/jfk/C.B. Memo The JFK Declass Exp.doc

Distribution:
Original - Addressee, w/atts
1 - C/IRG/SCD, w/atts
1 - IRG/SCD/HRO, w/atts (Harrelson)
1 - SCD Chrono, w/atts
1 - SCD Subj, w/atts

A

13-00000

closure-oriented than President Reagan's order. The current Executive Order applies to all Executive branch records and, unlike the JFK Act, requires agencies to engage in a systematic declassification of all records more than 25 years old. The Executive Order gives agencies five years—until April 2000—to declassify all *classified* information that is (1) more than 25 years old, and (2) is of permanent historical value unless the "agency head" determines that release of the information would cause one of the nine enumerated harms. The Executive Order provides for continuing protection for sources and methods where disclosure would damage the national security. It also protects, *inter alia*, information that involves diplomatic relations, U.S. cryptologic systems, war plans that are still in effect, and protection of the President.[8]

We need to separate sources from methods. This could be the most lasting effect of the Board.
—Steven Garfinkle, April 14, 1998

The JFK Act guidelines that governed the disclosure of records relating to the assassination of President Kennedy were detailed in section 6 of the JFK Act.[9] The JFK Act allowed the Review Board to postpone the release of assassination records only where the agencies provided clear and convincing evidence that one of five enumerated harms would occur if the Review Board released the record *and* that the harm outweighed the public interest in disclosure. The statute allowed protection of intelligence agents and intelligence sources and methods if the agency could show that the agent, source, or method currently required protection. The statute further allowed the Board to protect the identity of living persons who provided confidential information to the government if the agency could show that disclosure of the person's identity would pose a substantial risk of harm to the person. The JFK Act allowed the Review Board to postpone release of information if release would constitute an unwarranted invasion of personal privacy or if release would compromise the existence of an understanding of confidentiality between a government agent and a cooperating individual or foreign government. Finally, the JFK Act allowed the Review Board to protect current information concerning protection of government officials.

2. Key Distinctions Between Standards of Release Under the FOIA, the Executive Order, and the JFK Act

In considering whether the JFK Act was necessary to guarantee public access to assassination records, Congress evaluated the effectiveness of both the FOIA and the then-current Executive Order 12356. Both the House and the Senate concluded that the FOIA and the Executive Order, as administered by the executive branch, had failed to guarantee adequate public disclosure of assassination records.

At the time that the JFK Act became law, the largest collections of records concerning the assassination were under the control of the FBI, the CIA, and the Congressional Committees who investigated the assassination. The FOIA provides special protections for each of these entities, and thus could not serve as the mechanism for maximum disclosure of assassination records. *First,* the FOIA exempts CIA operational files from disclosure.[10] *Second,* the FOIA provides broad-based protection for law enforcement files and therefore allows the FBI to protect a substantial amount of its information from disclosure.[11] *Third,* the FOIA does not apply to unpublished Congressional records.[12] Congress found that the FOIA did not require adequate disclosure in those records that it *did* cover. Thus, Congress believed that the FOIA was not a satisfactory mechanism for guaranteeing disclosure of assassination records.[13]

President Clinton did not sign Executive Order 12958 until April 17, 1995—over two years after Congress passed the JFK Act. Clearly, the terms of the Executive Order applied to most assassination records since they were of permanent historical value *and* were over 25 years old. Even if President Clinton's Executive Order had been in effect prior to 1992, it could not have achieved the maximum disclosure accomplished by the JFK Act. The problem with the Executive Order is that it allowed "agency heads" to make the decision to exempt records from automatic declassification provided that the "agency head" expected that disclosure of the records would result in one of the nine enumerated categories of harm. As many sections of this Report explain, the Review

Board found that "agency heads" tended to be quite reluctant to release their agencies' secrets. The Executive Order, while well-intentioned, failed to provide for any independent review of "agency heads'" decisions on declassification. Thus, although the Executive Order's standards for declassification appeared to be disclosure-oriented, the Executive Order failed to hold agency heads accountable for their decisionmaking.

The JFK Act did require agencies to account for their decisions. To ensure such accountability, Congress included four essential provisions in the JFK Act: *first*, the JFK Act presumed that assassination records may be released; *second*, the JFK Act stated that an agency could rebut the presumption of disclosure only by proving, *with clear and convincing evidence*, that disclosure would result in harm and that the expected harm would outweigh any public benefit in the disclosure; *third*, the JFK Act created an *independent* agency—the Review Board—whose mandate was to ensure that agencies respected the presumption of disclosure and honestly presented clear and convincing evidence of the need to protect information; and *fourth*, the JFK Act required agencies to provide the Review Board with *access* to government records, even when those records would not become part of the JFK Collection. Without these accountability provisions, the JFK Act would not have accomplished its objective of maximum release of assassination records to the public. So, while the FOIA and the Executive Order each expressed the goal of obtaining maximum disclosure, the JFK Act ensured that the goal would be met. The two accountability provisions that relate directly to the Section 6 grounds for postponement—the presumption of release and the standard of proof—are discussed in detail below. The third provision discussed below is the Review Board's obligation to balance the weight of the evidence in favor of postponement against the public interest in release.

a. JFK Act presumes disclosure of assassination records.

The most pertinent language of the JFK Act was the standard for release of information. According to the statute, "all Government records concerning the assassination of President John F. Kennedy should carry a *presumption of immediate disclosure.*"[14] The statute further declared that *"only in the rarest cases is there any legitimate need for continued protection of such records."*[15]

b. JFK Act requires agencies to provide clear and convincing evidence.

If agencies wished to withhold information in a document, the JFK Act required the agency to submit clear and convincing evidence that the information fell within one of the narrow postponement criteria.[16]

> *The bill creates a strong presumption on releasing documents. The onus will be on those who would withhold documents to prove to the Review Board and the American people why those documents must be shielded from public scrutiny.*
> *—Senator John Glenn, May 12, 1992*

Congress selected the clear and convincing evidence standard because "less exacting standards, such as substantial evidence or a preponderance of the evidence, were not consistent with the legislation's stated goal" of prompt and full release.[17] The legislative history of the JFK Act emphasized the statutory requirement that agencies provide clear and convincing evidence.

> There is no justification for perpetual secrecy for any class of records. ***Nor can the withholding of any individual record be justified on the basis of general confidentiality concerns applicable to an entire class.*** Every record must be judged on its own merits, and every record will ultimately be made available for public disclosure.[18]

When agencies did present to the Review Board evidence of harm that would result from disclosure, it had to consist of more than speculation.

> The [Review] Board cannot postpone release because it might cause some *conceivable or speculative harm* to national security. Rather in a democracy the *demonstrable harm* from disclosure must be weighed against the benefits of release of the information to the public.[19]

The Review Board's application of the clear and convincing evidence standard is covered in more detail in Section B of this chapter.

Section B includes a discussion of the "Rule of Reason" that the Review Board ultimately adopted with regard to receiving evidence from the agencies.

c. *JFK Act requires the Review Board to balance evidence for postponement against public interest in release.*

Assuming that agencies did provide clear and convincing evidence that information should be protected from disclosure, the terms of section 6 required that information not be postponed unless the threat of harm outweighs the public interest in disclosure. As used in the JFK Act, "public interest" means "the compelling interest in the prompt public disclosure of assassination records for historical and governmental purposes and for the purpose of fully informing the American people about the history surrounding the assassination of President John F. Kennedy."[20] The Review Board interpreted the balancing requirement to mean that agencies had to provide the Review Board with clear and convincing evidence of the threat of harm that would result from disclosure. However, to the extent that the JFK Act left room for discretion in evaluating the historical significance, or public interest, of particular assassination records, it was the Review Board—not the agency that originated the document—that was to exercise this discretion. The burden was on the agencies to make the case for postponement, not to judge the level of public interest in a particular document. The JFK Act established the Review Board as a panel of independent citizens with expertise as historians and archivists precisely in order to secure public confidence in such determinations.[21]

d. *Segregability and substitute language.*

When the Review Board determined that the risk of harm *did* outweigh the public interest in disclosure, it then had to take two additional steps: (1) ensure that the agency redacted the least amount of information possible to avoid the stated harm, or "segregate" the postponed information, and (2) provide substitute language to take the place of the redaction.

3. Federal Agency Record Groups and the Standards Applied to Them.

The JFK Act defines "assassination records" to include records related to the assassination of President Kennedy that were "created or made available for use by, obtained by, or otherwise came into the possession of" the following groups: the Warren Commission, the four congressional committees that investigated the assassination, any office of the federal government, and any state or local law enforcement office that assisted in a federal investigation of the assassination.[22]

When it passed the JFK Act, Congress intended for the JFK Collection to include the record groups that it identified in section 3(2), but it also intended for the Review Board to consider carefully the scope of the term "assassination record" and to issue an interpretive regulation defining this crucial term.[23] The Act requires government agencies to identify, organize, and process those assassination records that are defined as assassination records in section 3(2). Chapter 6 of this report explains how the Review Board interpreted its responsibility to define and seek out "additional records and information." Set forth below is a description of some of the core government holdings on the assassination which were released under the standards of the Review Board.

a. *The FBI's "core and related" files.*

The FBI's "core and related" files consist of those records that the FBI gathered in response to FOIA requests that it received in the 1970s for records relating to the assassination of President Kennedy. The "core" files include the FBI files on Lee Harvey Oswald and Jack Ruby, as well as the FBI's Warren Commission files and the JFK assassination investigation file. The "related" files include FBI files on Lee Harvey Oswald's wife Marina and mother Marguerite, Oswald's friend George DeMohrenschildt, and the Oswalds' Dallas friends Ruth and Michael Paine. The FBI began its processing of the core and related files in 1993. The Review Board applied strict standards to its review of postponements in the core and related files.

13-00000

b. CIA's Lee Harvey Oswald "201" file.

CIA opens a 201 file on an individual when it has an "operational interest" in that person. The CIA opened its 201 file on Lee Harvey Oswald in December 1960 when it received a request from the Department of State on defectors. After President Kennedy's assassination, the Oswald 201 file served as a depository for records CIA gathered and created during CIA's wide-ranging investigation of the assassination. Thus, the file provides the most complete record of the CIA's inquiry in the months and years immediately following the assassination.

c. The FBI's "House Select Committee on Assassinations" (HSCA) Subject Files.

During the HSCA's tenure, the Committee made a number of requests to the FBI for records that the Committee believed might be relevant to their investigation of the Kennedy assassination. In response to the HSCA's requests, the FBI made available to the HSCA staff approximately 200,000 pages of FBI files. The FBI began its processing of the "HSCA Subject" files in 1993. The Review Board applied its "Segregated Collection" guidelines (explained below) to the HSCA subject files.

d. The CIA's "Segregated Collection" files.

HSCA investigators gained access to CIA files. Upon completion of the HSCA's work, the CIA kept separate the files that it had made available to the HSCA and retained them as a segregated collection. This collection is divided into two parts: paper records and microfilm. CIA made 63 boxes of paper records available to the HSCA staff. The paper records consist, in many cases, of particular records that CIA culled from various files. The 64th box of the CIA's segregated collection contains 72 reels of microfilm and represents the entire set of files from which records were made available to the HSCA. Thus, in many cases, the microfilmed files contain material well beyond the scope of the HSCA investigation and may, for example, cover an agent's entire career when only a small portion of it intersected with the assassination story.

e. FBI records on the congressional committees that investigated the assassination.

The JFK Act defined "assassination record" to include records relating to the Kennedy assassination that were used by the congressional committees who investigated events surrounding the assassination.[24]

Before President Clinton appointed the Review Board, the FBI collected and began to process its administrative files relating to its involvement with each of these committees. In large part, the records contained in the Bureau's administrative files related to topics other than the Kennedy assassination. To the extent that the Review Board found records in these files that concerned topics other than the Kennedy assassination, it designated the records not believed relevant (or "NBR" as that acronym is defined *infra*) and removed them from further consideration.

f. Requests for Additional Information.

Congress included in the JFK Act a provision that allowed the Review Board to obtain additional information and records beyond those that were reviewed by previous investigations. Chapter 6 of this report explains the requests that the Review Board made and the assassination records designated as a result of those requests.

B. DECLASSIFICATION STANDARDS

The Review Board's primary purpose, as outlined in section 7(b) of the JFK Act, was to determine whether an agency's request for postponement of disclosure of an assassination record met the criteria for postponement set forth in section 6. Section 6 consisted of an introductory clause, which established the "clear and convincing evidence" standard, and five subsections that set forth the criteria under which the Review Board could agree to postpone public disclosure of assassination-related information.

1. Standard of Proof: Clear and Convincing Evidence

Text of Section 6

Disclosure of assassination records or particular information in assassination records

13-00000

to the public may be postponed subject to the limitations of this Act if [agencies provide] clear and convincing evidence that [the harm from disclosure outweighs the public interest in release.]

a. Review Board guidelines. For each recommended postponement, the JFK Act requires an agency to submit "clear and convincing evidence" that one of the specified grounds for postponement exists.[25] The Review Board required agencies to submit specific facts in support of each postponement, according to the Review Board's guidelines for each postponement type.

b. Commentary. Although the agencies argued that the clear and convincing evidence standard could be satisfied by a general explanation of those agencies' positions in support of postponements, the Review Board determined that the clear and convincing evidence requirement was a document-specific one. Thus, the Board required agencies to present evidence that was tailored to individual postponements within individual documents.

I think today a great gulf exists between people and their elected officials. Doubts about this particular matter are a symptom of that, and so I think the purpose of this hearing is to ask some questions. Why does information need to be withheld? At this moment in time, what compelling interests are there for the holding back of information? Are there legitimate needs in this respect? Who and what is being protected? Which individuals, which agencies, which institutions are in the need of protection, and what national security interests still remain?
—Senator William S. Cohen, May 12, 1992

The JFK Act clearly required agencies to provide clear and convincing evidence in support of their postponements, but it did not establish a mechanism for when and how such evidence should be presented. The legislative history provides a clue as to Congress' intent: "[T]o the extent possible, consultation with the government offices creates an understanding on each side as to the basis and reasons for their respective recommendations and determinations."[26] The Review Board did consult with government offices to determine fair, efficient, and reasonable procedures for presenting evidence.

The Review Board began its review of assassination records by considering pre- assassination records on Lee Harvey Oswald. In an attempt to arrive at consistent decisions, the Board asked the staff to present the records on an issue-by-issue basis. For example, with FBI records, the Review Board first scheduled a group of FBI records for review and notified the FBI of the meeting date at which it intended to vote on the records. The Review Board invited the FBI to present its evidence. Second, the FBI requested that it be allowed to brief the members of the Review Board. At the briefing, the FBI presented its position to the Board—both in an oral presentation and in a "position paper." The FBI's "position papers" summarized the FBI's general policy preferences for continued classification of certain categories of information. Third, the Review Board staff researched existing law on each of the FBI's "positions" and determined that the arguments that the FBI put forth in support of its JFK Act postponements were essentially the same arguments that the FBI offers to courts for FOIA cases. Of course, in legislating the declassification standards of the JFK Act, Congress intended for the JFK Act standards—and <u>not</u> the FOIA standards—to apply. Aware of congressional intent, the Review Board rejected the FBI's general policy preferences on the basis that the arguments did not constitute the clear and convincing evidence necessary to support a request for a postponement under section 6. The FBI did appeal the Review Board's decisions to the President, but the Review Board's document-specific interpretation of the clear and convincing evidence standard ultimately prevailed when the vote was withdrawn.

i. "Rule of Reason." Of course, some assassination records are of greater interest than others. With regard to records that had a close nexus to the assassination, the Review Board strictly applied the law. For example, the Review Board voted to release in full nearly all of the information in the FBI's pre-assassination Lee Harvey Oswald file and the bulk of the information in the HSCA's report on CIA activities in Mexico City—the "Lopez" report—because of the high public interest in that material. With regard to the FBI files, the FBI believed that its arguments were compelling enough to merit appeals to the President on nearly all of the Review Board's decisions on the pre-assassination Lee Harvey Oswald records. The FBI, the Review Board, the White House Counsel's

Office, and ultimately the Department of State spent a substantial amount of time resolving the issues that arose in the appeal process, and for those important records that were at issue, the Review Board considered its time well-spent. The Review Board similarly dealt with other key records and spent as much time as was necessary to deliberate and decide upon those records.

The postponement-by-postponement review at each early Review Board meeting proved to be a slow and careful process. The postponement-by-postponement review proved to be a necessary educational process for the Board members. The Board members were a group of five citizens who were selected not for their familiarity with the subject of the assassination, but for their professional competence in history and law. Thus, through reviewing individual documents at its early meetings, the Board essentially educated itself about the assassination.

While the Review Board did need time to educate itself and to develop its policies, the Board's pace eventually increased. In an effort to streamline its work, the Review Board consulted with federal agencies such as the CIA and FBI to work out an approach for review of records that would allow the Review Board to make informed decisions, but not require agencies to spend hundreds of hours locating evidence for and providing briefings on each postponement within an assassination record.

The first step to developing a reasonable approach was for the Review Board to formulate general rules for sustaining and denying postponements. The Review Board's "guidance" to its staff and the agencies became a body of rules—a Review Board "common law." Once the Review Board notified an agency of its approach on a particular type of postponement, the agency learned to present only those facts that the Review Board would need to make a decision. For example, with regard to FBI informants, the Review Board notified the FBI of what it considered to be the relevant factors in its decisionmaking. In other words, it defined for the Bureau what it considered to be "clear and convincing" evidence. Then, the Review Board worked with the FBI to create a one-page form titled an "Informant Postponement Evidence Form" that the FBI could use to provide evidence on an informant. (See illustration.) The form allowed the FBI to simply fill in the answers to a series of questions about the informant in question, which in turn allowed the Review Board to focus on those facts that it deemed to be dispositive in a particular document. This approach had the added benefit of providing consistency to the Review Board's decisionmaking.

A large number of records that the JFK Act defined as "assassination records" proved to be of very low public interest. The JFK Act required the Review Board to process all records that were "made available" to the Warren Commission and the Congressional Committees that investigated the assassination, whether or not the records were used by the Commission or the committees. Many of these records, while interesting from a historian's perspective, are not closely related to the assassination. For those documents that were of little or no public interest, the Review Board modified its standards in the two ways described below.

A. "NBR" Guidelines: Records that Review Board judged were "not believed relevant" to the assassination. For those records that truly had no apparent relevance to the assassination, the Review Board designated the records "not believed relevant" (NBR). The "NBR" Guidelines allowed the Review Board to remove irrelevant records from further consideration. Records that the Review Board designated "NBR" were virtually the only groups of records that the Review Board agreed to postpone in full. Thus, the Review Board was always extremely reluctant to designate records "NBR" and rarely did so.

B. Segregated Collection Guidelines. For those records that were not immediately relevant, but shed at least some light on issues that the congressional committees that investigated the assassination explored as potentially relevant to the assassination, the Review Board created the "Segregated Collection Guidelines." The segregated collections records, although marginally relevant, were not appropriate for "NBR" designation, as the "NBR" Guidelines would have resulted in withholding records in full. Instead, the Board passed the "Segregated Collection" Guidelines, which ensured that the Review Board staff would review every page of the

marginally relevant records, but would not require agencies to present the same amount of evidence in support of postponements. The regulations that the Review Board adopted on November 13, 1996, define "Segregated Collections" to include the following: (1) FBI records that were requested by the HSCA in conjunction with its investigation into the assassination of President Kennedy, the Church Committee in conjunction with its inquiry into issues relating to the Kennedy assassination, and the Pike Committee and Rockefeller Commission that investigated issues related to the assassination; (2) CIA records including the CIA's segregated collection of 63 boxes as well as one box of microfilm records (box 64) and several boxes of CIA staff "working files." The Review Board adopted revised guidelines on April 23, 1997 in an attempt to streamline the review process of postponements in the segregated collections, and ensure a page-by-page review of all documents in the segregated collections. The guidelines state, "...even with the assumption that our operations may be extended through Fiscal Year 1998, the Review Board cannot hope to complete review of postponements in the Segregated Collections under the current method of review." Where the Review Board's standards differed between core files and segregated collection files, the guidelines set forth below note the distinction.

Thus, throughout its tenure, the Review Board sought to be vigorous in applying the law, but, in order to complete its work, found it necessary to employ a "rule of reason."

2. Intelligence Agents

Text of Section 6(1)(A)

...clear and convincing evidence that the threat to the military defense, intelligence operations, or conduct of foreign relations of the United States posed by the public disclosure of the assassination record is of such gravity that it outweighs the public interest, and such public disclosure would reveal—

(A) an intelligence agent whose identity currently requires protection...

a. CIA officers.

i. Review Board guidelines. The Review Board usually protected the names of CIA officers who are still active or who retired under cover and are now living in potentially risky circumstances. The Review Board usually released names of deceased CIA officers and the names of CIA officers whose connection to the CIA was public knowledge. When the Review Board postponed names, it usually substituted the phrase, "CIA Employee."

ii. Commentary. Names of numerous CIA officers appeared in the CIA's assassination records. The Review Board and the CIA had to confront the challenge presented by the statute, which requires name-specific evidence, but gathering such evidence proved to be time-consuming and burdensome for the CIA and the names of CIA officers in the records were not always relevant to the assassination. The statute, of course, states that the only way that the Review Board could protect names of intelligence agents was if the CIA provided clear and convincing evidence that the CIA officer's identity "currently" required protection.

The CIA initially believed that the solution to the above-referenced challenge was for the Review Board to agree with CIA that the names of all CIA officers within the JFK Collection should be postponed until the year 2017. The CIA supported its request for blanket postponements with two arguments: *first,* since many CIA employees are "under cover," CIA argued that its intelligence gathering capability depended on employees maintaining cover, and, *second,* even though the majority of CIA officer names in the Collection are names of retired CIA employees, CIA is bound by a confidentiality agreement to protect the relationship. Many of these former employees objected to release of their former Agency affiliation, complaining that it violates this agreement and suggesting that such release might jeopardize business relationships or threaten personal safety.

Mindful of the JFK Act's requirement that agencies provide name-specific evidence, the Review Board would not agree to CIA's request for blanket postponements of CIA names. Instead, the Review Board requested CIA to provide evidence for each name.

The CIA, however, was reluctant to produce name-specific evidence and, on occasion, CIA failed to furnish evidence when it promised to do so. CIA's initial refusal to supply evidence on individual names was met, not with the wholesale release of names by the Board, but with a firm insistence that the Agency meet the requirements of the Act. The Review Board released the names of a few individuals who were of central importance to the assassination story early in the process, but gave the Agency a number of additional opportunities to provide specific evidence on other names.

For example, in December 1995, the Review Board designated one day of their meeting "name day," and invited CIA to provide evidence for names the Review Board had encountered in CIA records during the previous six to seven months. On that day, CIA again requested the Review Board to sustain the postponement of all CIA names. The Review Board did not want to jeopardize the personal safety of individuals and gave CIA more time to provide evidence. The Board set other "name days" in May 1996 and May 1997. As deadlines for submission of evidence approached, CIA agreed to release some names, but in most cases, continued to offer less than satisfactory evidence on those they wished to protect. Gradually, the CIA did begin to provide supporting evidence of the postponement of individual names.

By May 1996, the Review Board had decided what evidence would meet the clear and convincing evidence standard. If the CIA provided evidence that the individual retired under cover or abroad, or evidence that the individual objected to the release of his or her name when contacted (CIA agreed to attempt to contact former employees), the Review Board would protect the CIA officer's name. Moreover, where the CIA specifically identified an ongoing operation in which the individual was involved or CIA could demonstrate that the person was still active with CIA, the Review Board would protect the name. Because the JFK Act required the Review Board to balance the potential harm from disclosure against the public interest in release, there were cases in which the Review Board determined that, even though the CIA had provided the required evidence, the Review Board believed that the individual was of sufficiently high public interest that it would require the CIA to provide additional evidence before it would consider protecting the name. In these cases, the Review Board asked CIA to provide information on the employee's current status, his or her location, and the nature of the work he or she did for the CIA.

The Review Board determined that names were of high public interest when the CIA officer at issue had a substantive connection to the assassination story or where the CIA officer's name appeared in CIA's Oswald 201 file. By July 1997, the Review Board had determined that where CIA officer names did not fit within one of the "high public interest" categories, it would require CIA to provide significantly less evidence in support of its requests for postponement. Given the large number of CIA officer names in the CIA records, the Review Board determined that it had to adopt the practical high public interest/low public interest approach, particularly since it had limited time and resources available to complete its own review of CIA records. The Review Board would have preferred to review each name at the same high level of scrutiny that it used to review names of high public interest. Nevertheless, the Board's approach compelled the CIA to release many more names than it would have desired.

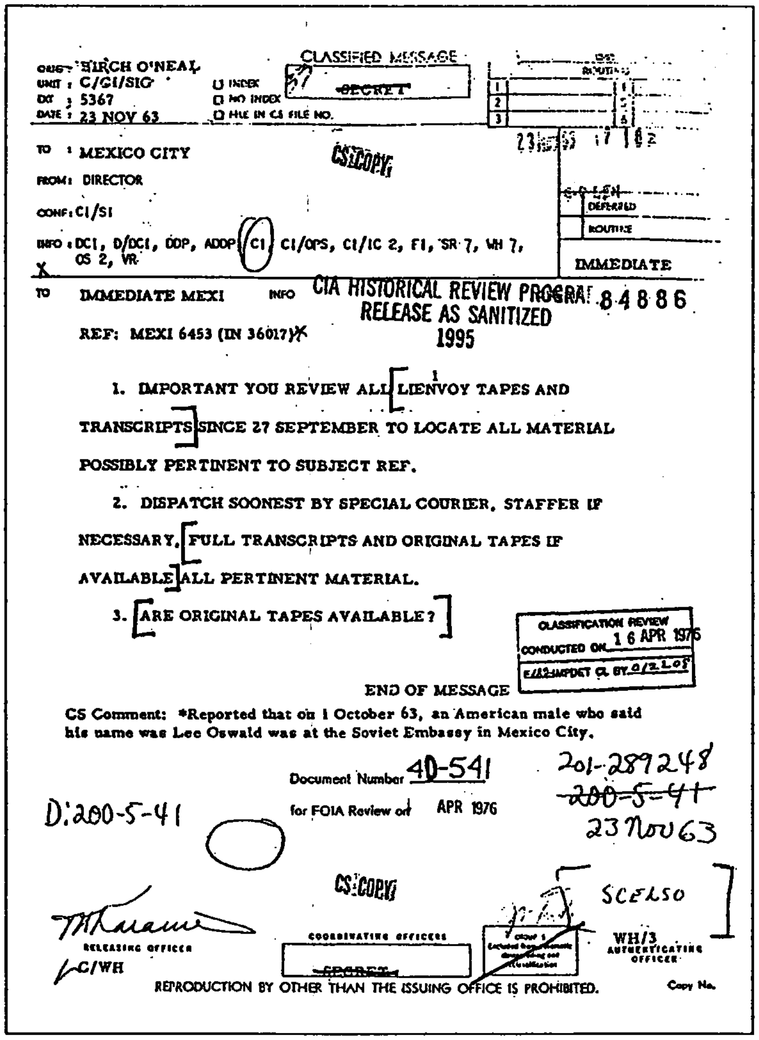
b. "John Scelso" (pseudonym).

i. Review Board guidelines. The Review Board protected the true name of the individual known by the pseudonym of John Scelso until May 1, 2001 or three months after the decease of the individual, whichever comes first.

ii. Commentary. The CIA employee who was head of CIA's division "Western Hemisphere 3" during the period immediately after the assassination of President Kennedy testified before the HSCA and the Church Committee under the "throw-away" alias John Scelso. His true name appears on hundreds of documents in the JFK collection, many of which were the product of the Agency's extensive post-assassination investigation that spanned the globe. In reviewing this particular name, the Review Board's desire to satisfy the public's interest in release

13-00000

clashed with the CIA's strong evidence in support of postponement. Initially, the Board was inclined to release Scelso's true name, but the Agency argued convincingly against release. CIA provided evidence on the current status of the individual, shared correspondence sent by him, and even arranged an interview between him and a Review Board staff member. As an interim step, the Review Board inserted his prior alias "Scelso" as substitute language. (See illustration.) Then, at its May 1996 meeting, Board members determined to release "Scelso's" true name in five years or upon his death.



CLASSIFIED MESSAGE

ORIG: BIRCH O'NEAL
UNIT: C/CI/SIG
EXT: 5367
DATE: 23 NOV 63

☐ INDEX
☐ NO INDEX
☐ FILE IN CS FILE NO.

SECRET

TO: MEXICO CITY
FROM: DIRECTOR
CONF: CI/SI
INFO: DCI, D/DCI, DDP, ADDP, CI, CI/OPS, CI/IC 2, FI, SR 7, WH 7, OS 2, VR

CS COPY

DEFERRED
ROUTINE
IMMEDIATE

TO IMMEDIATE MEXI INFO

CIA HISTORICAL REVIEW PROGRAM
RELEASE AS SANITIZED
1995

84886

REF: MEXI 6453 (IN 36017)*

1. IMPORTANT YOU REVIEW ALL [LIENVOY TAPES AND TRANSCRIPTS] SINCE 27 SEPTEMBER TO LOCATE ALL MATERIAL POSSIBLY PERTINENT TO SUBJECT REF.

2. DISPATCH SOONEST BY SPECIAL COURIER, STAFFER IF NECESSARY, [FULL TRANSCRIPTS AND ORIGINAL TAPES IF AVAILABLE] ALL PERTINENT MATERIAL.

3. [ARE ORIGINAL TAPES AVAILABLE?]

CLASSIFICATION REVIEW
CONDUCTED ON 16 APR 1976
E2 IMPDET CL BY 012105

END OF MESSAGE

CS Comment: *Reported that on 1 October 63, an American male who said his name was Lee Oswald was at the Soviet Embassy in Mexico City.

Document Number 40-541
for FOIA Review on APR 1976

201-289248
~~200-5-41~~
23 Nov 63

D: 200-5-41

CS COPY

[SCELSO]

RELEASING OFFICER
C/WH

COORDINATING OFFICERS

WH/3
AUTHENTICATING OFFICER

SECRET

REPRODUCTION BY OTHER THAN THE ISSUING OFFICE IS PROHIBITED.

Copy No.

c. Information that identifies CIA officers.

i. Review Board guidelines. For specific information that, if released, would reveal the identity of an individual CIA officer that the Board had voted to protect, the Review Board protected the information.

ii. Commentary. Whenever the Review Board voted to protect the identity of an individual throughout federal agency assassination records, it had to be realistic enough to realize that some information about individuals is so specific that release of the information would reveal the individual's identity. Examples of specific identifying information include home addresses, birth dates, job titles, names of family members, and other less obvious, but equally revealing pieces of information.

d. Names of National Security Agency employees.

i. Review Board guidelines. The Review Board protected the names of all National Security Agency employees that it encountered. The Review Board would have considered releasing names of National Security Agency employees if it determined that a particular name was extremely relevant to the assassination.

ii. Commentary. Due to the nature of NSA information, few NSA employee names appeared in NSA's assassination records. Even though the Review Board did not often encounter NSA employee names, it did have to vote on those names that it did confront. NSA's policy of not releasing the names of its employees conflicted with section 6(1)(A) of the JFK Act that presumed release of such information unless NSA could prove that individual NSA employee names required protection. NSA argued that the release of any names, other than those of publicly acknowledged senior officials, jeopardized the potential security of U.S. cryptographic systems and those individuals. As it did with the names of other intelligence agents and officers, the Review Board considered the names of NSA officers on a document-by-document basis. Given the nature of NSA information, the Review Board members agreed that none of the few names which appear in the documents, and for which NSA requested protection, was of high enough public interest or central to an understanding of the assassination story. Thus, it protected the names.

3. Intelligence Sources and Methods, and Other Matters Relating to the National Security of the United States

Text of Section 6(1)(B) and (C)

...clear and convincing evidence that the threat to the military defense, intelligence operations, or conduct of foreign relations of the United States posed by the public disclosure of the assassination record is of such gravity that it outweighs the public interest, and such public disclosure would reveal—

(B) an intelligence source or method which is currently utilized, or reasonably expected to be utilized, by the United States Government and which has not been officially disclosed, the disclosure of which would interfere with the conduct of intelligence activities; or

(C) any other matter currently relating to the military defense, intelligence operations or conduct of foreign relations of the United States, the disclosure of which would demonstrably impair the national security of the United States;

a. CIA sources.

i. Review Board guidelines. The Review Board handled CIA sources, assets, informants, and specific identifying information under standards similar to the Board's decisions for CIA officers. Where the Review Board believed names held a high level of public interest, either because the name was central to the story or because assassination researchers expressed interest in the name, the Review Board subjected them to close scrutiny. The Board generally protected the identity of foreign nationals unless they were of high public interest and then the Review Board required CIA to provide specific evidence in support of its claimed postponements. The Review Board protected domestic sources, assets and informants where CIA demonstrated that release would jeopardize ongoing operations or harm individuals. If CIA did not provide evidence of one of the two above-referenced harms, the Review Board released the name at issue. In addition, where the public already knew the names of individuals who were connected to the CIA, especially if the government had previously released the information, the Review Board released the information.

ii. Commentary. The Review Board addressed the issue of whether to postpone or release source names at the same time that it considered CIA employee names, and encountered the same problems as it had in the review of CIA employee names. As with CIA employee names, CIA was reluctant to provide name-specific evidence to the Review Board, opting instead to offer general principles supporting CIA's request that the Review Board redact all names.

The Review Board should consider a variety of factors related to the need to postpone disclosure of intelligence sources and methods, including the age of the record, whether the use of a particular source or method is already well known by the public (e.g. that the Soviet Embassy in Mexico City was bugged during the alleged visit of Lee Harvey Oswald), and whether the source or method is inherently secret, or whether was the information it collected which was secret.
—Senate Report on JFK Act, July 22, 1992

The Review Board ultimately decided to protect the names of sources, assets, and informants in cases where the identity of the source is of reduced public interest because CIA sources live in countries other than the U.S. and were more likely to face harm if the Board disclosed their relationship with CIA. In those records where the source's identity was of possible public interest in relation to the assassination story or was important to understanding information related to the assassination, the Review Board required the CIA to provide additional evidence to support the protection of the source's identity.

When the Review Board postponed release of source names, it did so for ten years except in cases where a foreign government might accuse the source of committing treason for assisting the CIA. In those cases, the Review Board protected the source's name and identifying information until 2017.

b. CIA pseudonyms.

i. Review Board guidelines. With only a few exceptions, the Review Board released the pseudonyms of individuals. In some instances, the Review Board used pseudonyms as substitute language for the individual's true name.

ii. Commentary. Very early in the review process, the Review Board determined that, since pseudonyms were a sort of "throw away" identity for individuals who were under cover, the Review Board could release

the pseudonym without harming the individual. The CIA did not object to the Review Board's policy to release pseudonyms. The CIA did identify several pseudonyms that it believed to be particularly sensitive, and demonstrated to the Review Board with clear and convincing evidence that release of those pseudonyms would do irreparable harm.

c. CIA crypts.

i. Review Board guidelines. The Review Board released some CIA "crypts"—code words for operations and individuals. The Review Board also generally released CIA "digraphs"—the first two letters of a crypt that link a particular crypt to a particular location. CIA often created crypts to refer to other U.S. government agencies; for example, the FBI was "ODENVY." The Review Board made a blanket decision to release all U.S. government crypts. The Review Board nearly always released CIA crypts where those crypts denoted operations or individuals relating to Mexico City or Cuba. (The digraph for Mexico City was "LI," and for Cuba, it was "AM.") For all other crypts, the Review Board protected the digraph and released the remainder of the crypt. The Review Board established a few exceptions, and where exceptions applied, the Board required CIA to provide crypt-specific evidence of the need to protect.

ii. Commentary. The Review Board had to determine whether it believed that release of CIA crypts would harm CIA operations and individuals. Section 6(1)(B) and (C) of the JFK Act provided the standard for postponement of CIA crypts. The Review Board required the CIA to provide crypt-specific clear and convincing evidence that CIA currently used, or expected to use the crypt and that CIA had not previously released the crypt. Thus, in order to convince the Review Board to sustain postponements, the Board required CIA to research each crypt to determine whether CIA still used the individual or the operation and provide that evidence to the Review Board.

As it did with CIA agent names, CIA initially requested the Review Board to sustain postponements of all CIA crypts—even "ODENVY"—the CIA's old crypt for the FBI that CIA had already released in other CIA records. CIA argued that its use of crypts was an operational method that should remain secret, even though CIA had replaced most of the crypts at issue years earlier. CIA believed that if the Review Board released the crypts, researchers would be able to piece together the records and determine the identity of operations and individuals. CIA further argued that the burden of locating evidence on each crypt was too heavy.

The Review Board, conversely, believed that CIA conceived crypts as a code to hide the identity of an operation or an individual, and so the Review Board could release the crypts and not compromise the operation or the individual. As with CIA agent names, the Review Board allowed the CIA ample time to locate evidence on each crypt. Finally, the Review Board released a group of CIA crypts from Mexico City with the "LI" digraph. CIA eventually agreed to release its crypts and digraphs in assassination records, and the Review Board eventually agreed to protect certain sensitive crypts.

The Review Board recognized that it could not conduct a crypt-by-crypt review for every CIA record that it encountered. CIA records contain hundreds of thousands of crypts. Given the need to finish its work, the Review Board decided that, for all crypts *except* the "LI," "AM," and "OD" series crypts, it would agree to postpone the location-specific digraph and release the actual crypts. Thus, the Review Board released most crypts in the collection and the most relevant digraphs. The Review Board did make three exceptions to its general rule: it protected the digraph in non-core files when (a) the crypt appeared next to a true name that had been released, (b) when the crypt appeared next to specific identifying information, and (c) when CIA provided clear and convincing evidence that the Review Board should protect the digraph.

d. CIA sluglines.

i. Review Board guidelines. "Sluglines" are CIA routing indicators, consisting of two or more crypts, that appear above the text in CIA cables. (See illustration.) The Review Board released CIA sluglines according to the same criteria it applied to crypts and digraphs.

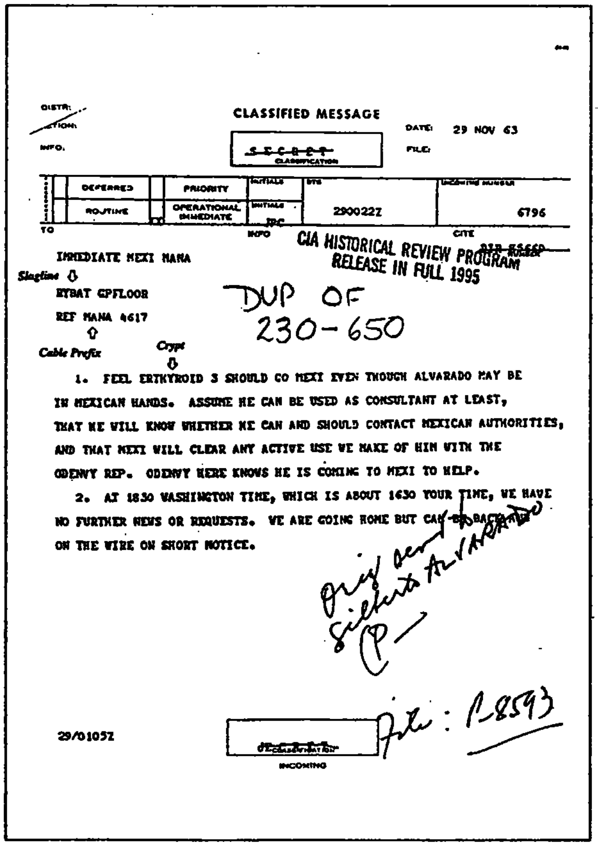
ii. Commentary. The Review Board released CIA sluglines because the Agency never offered the Review Board any evidence to explain why the Board should not release them. An example of a CIA slugline is "RYBAT GPFLOOR." "RYBAT" is a CIA crypt that meant "secret," and GPFLOOR was the crypt that CIA gave Lee Harvey Oswald during its post-assassination investigation. CIA initially asked the Review Board to postpone the CIA slugline even where CIA had released the individual crypts that made up the slugline elsewhere. For example, in the case of "RYBAT GPFLOOR," the CIA agreed to release the crypt "RYBAT" in two places elsewhere in the document at issue, and the CIA agreed to release the crypt GPFLOOR when it appeared in the text. CIA told the Review Board that it could not, however, release the slugline "RYBAT GPFLOOR." CIA offered no substantive arguments to support its request for postponement of the slugline. Given the statute's demand that CIA provide clear and convincing evidence in support of its requests for postponement, the Review Board voted to release CIA sluglines.

e. CIA surveillance methods.

i. Review Board guidelines. The Review Board generally released CIA surveillance methods, the details of their implementation, and the product produced by them where the Review Board believed the methods were relevant to the assassination. The Review Board sustained postponements of CIA surveillance methods where CIA provided convincing evidence that the method still merited protection. Where the Review Board sustained the CIA's requests for postponement of surveillance methods, it substituted the language "surveillance method," "operational details," or "sensitive operation."

ii. Commentary. As with all its sources and methods, CIA initially requested the Review Board to postpone all of its surveillance methods since, CIA argued, CIA currently conducts surveillance operations. The Review Board, on the other hand, believed that it was not a secret that CIA currently conducts surveillance operations. Moreover, the Review Board did not believe that its votes to release CIA surveillance methods in Mexico City in 1963 would jeopardize current CIA surveillance operations. Finally, the Review Board recognized that certain CIA surveillance operations in Mexico City in 1963 were already well-known to the public because the U.S. government had disclosed details about those operations. CIA surveillance, particularly telephone taps and photo operations, was a major element in the story of Oswald's 1963 trip to Mexico City. (See illustration.)

The Board, therefore, concluded that the public interest in disclosure far outweighed any risk to national security and directed release of the information. However, in records that CIA proved did contain information about current operations, the Review Board voted to postpone the information.


DISTR:
ACTION:
INFO:

CLASSIFIED MESSAGE

SECRET
CLASSIFICATION

DATE: 29 NOV 63
FILE:

DEFERRED	PRIORITY	INITIALS	DTG	INCOMING NUMBER
ROUTINE	OPERATIONAL IMMEDIATE	INITIALS JPC	2900227	6796

TO INFO CITE

CIA HISTORICAL REVIEW PROGRAM RELEASE IN FULL 1995

IMMEDIATE MEXI MANA

Slugline ⇩

RYBAT GPFLOOR

REF MANA 4617

⇧ Cable Prefix

Crypt ⇩

DUP OF 230-650

1. FEEL ERTKYROID 3 SHOULD GO MEXI EVEN THOUGH ALVARADO MAY BE IN MEXICAN HANDS. ASSUME HE CAN BE USED AS CONSULTANT AT LEAST, THAT HE WILL KNOW WHETHER HE CAN AND SHOULD CONTACT MEXICAN AUTHORITIES, AND THAT MEXI WILL CLEAR ANY ACTIVE USE WE MAKE OF HIM WITH THE ODENVY REP. ODENVY HERE KNOWS HE IS COMING TO MEXI TO HELP.

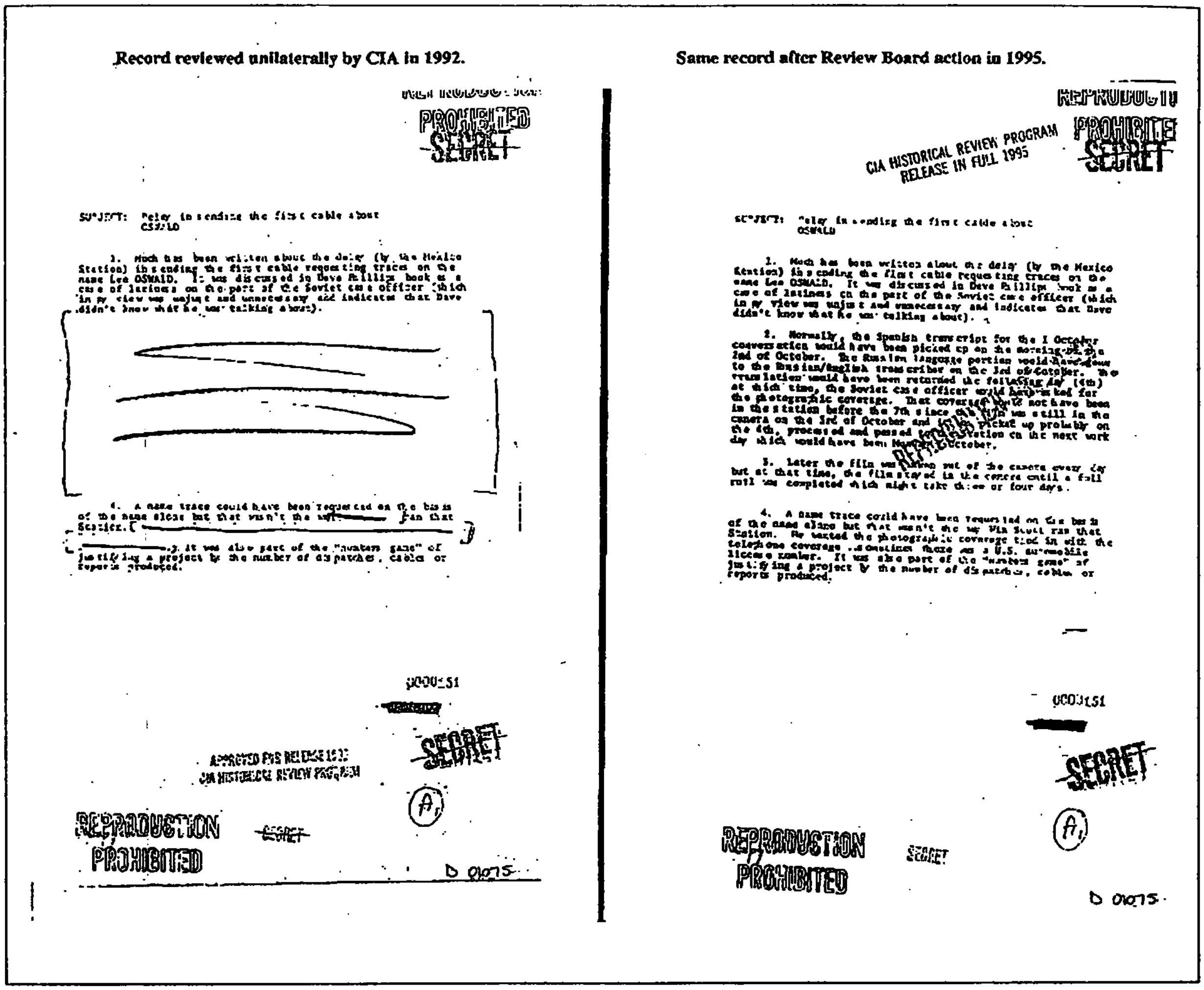
2. AT 1830 WASHINGTON TIME, WHICH IS ABOUT 1630 YOUR TIME, WE HAVE NO FURTHER NEWS OR REQUESTS. WE ARE GOING HOME BUT CAN BE BACK ON THE WIRE ON SHORT NOTICE.

29/01052

INCOMING

f. CIA installations.

i. Review Board guidelines. The Review Board used date "windows" within which it released the locations of CIA installations where the location was relevant to the assassination. Specifically, the Review Board released the location of CIA installations relating to Mexico City during the time period 1960-1969. Likewise, the Review



Record reviewed unilaterally by CIA in 1992.

PROHIBITED
SECRET

SUBJECT: Delay in sending the first cable about OSWALD

1. Much has been written about the delay (by the Mexico Station) in sending the first cable requesting traces on the name Lee OSWALD. It was discussed in Dave Phillips book as a case of laziness on the part of the Soviet case officer (which in my view was unjust and unnecessary and indicates that Dave didn't know what he was talking about).

[redacted]

4. A name trace could have been requested on the basis of the name alone but that wasn't the way [redacted] ran that Station. [redacted]. It was also part of the "numbers game" of justifying a project by the number of dispatches, cables or reports produced.

000151

APPROVED FOR RELEASE 1992
CIA HISTORICAL REVIEW PROGRAM

SECRET

REPRODUCTION PROHIBITED

SECRET

D 00015

Same record after Review Board action in 1995.

REPRODUCTION PROHIBITED
SECRET

CIA HISTORICAL REVIEW PROGRAM
RELEASE IN FULL 1995

SUBJECT: Delay in sending the first cable about OSWALD

1. Much has been written about the delay (by the Mexico Station) in sending the first cable requesting traces on the name Lee OSWALD. It was discussed in Dave Phillips book as a case of laziness on the part of the Soviet case officer (which in my view was unjust and unnecessary and indicates that Dave didn't know what he was talking about).

2. Normally, the Spanish transcript for the 1 October conversation would have been picked up on the morning of the 2nd of October. The Russian language portion would have gone to the Russian/English transcriber on the 3rd of October. The translation would have been returned the following day (4th) at which time, the Soviet case officer would have asked for the photographic coverage. That coverage would not have been in the station before the 7th since the film was still in the camera on the 3rd of October and would be picked up probably on the 4th, processed and passed to the station on the next work day which would have been Monday, October.

3. Later the film was taken out of the camera every day but at that time, the film stayed in the camera until a full roll was completed which might take three or four days.

4. A name trace could have been requested on the basis of the name alone but that wasn't the way Win Scott ran that Station. He wanted the photographic coverage tied in with the telephone coverage ... sometimes there was a U.S. automobile license number. It was also part of the "numbers game" of justifying a project by the number of dispatches, cables or reports produced.

000151

SECRET

REPRODUCTION PROHIBITED

SECRET

D 00015

Board generally released the location of *all* CIA installations that were relevant to the assassination during the time period between the date of the assassination—November 22, 1963—and the date that the Warren Commission issued its report in September 1964. Finally, the Review Board generally released the location of *all* CIA installations that appeared in Oswald's 201 file during the time period January 1, 1961 through October 1, 1964. The Review Board did grant CIA a few exceptions to its general rule, and except for the specific time windows described above, the Review Board protected all information that identified CIA installation locations.

The Review Board created substitute language for its postponement of CIA installations to enable researchers to track a particular CIA installation through the JFK collection without revealing the city or country in which it is located. To accomplish this, the Review Board divided the world into five regions: Western Hemisphere, Western Europe, Northern Europe, East Asia/ Pacific, and Africa/ Near East/ South Asia. Then the Board added a number to refer to each different location in the region. Thus, "CIA Installation in Western Hemisphere 1" serves as a place holder for a particular installation in all CIA assassination records.

ii. Commentary. Initially, the Review Board released CIA installation locations in CIA documents relevant to Oswald's visit to Mexico City. CIA did not raise significant objections to the Review Board's release of its installations in these records.

When the Review Board began to vote to release the location of additional CIA installation locations, the CIA did object, but did not offer evidence of the harm to national security that it believed would result from disclosure of the information. The CIA

threatened to appeal to the President to overturn the Review Board's votes, but the Review Board's position was that the JFK Act required release of information where CIA did not provide convincing evidence to support their postponements. The Review Board allowed the CIA ample time to gather and present its evidence to support its requests for postponements as both the CIA and the Review Board hoped to avoid a CIA appeal to the President.

Ultimately, the CIA determined that it would trust Review Board members with the information that the Review Board required to postpone the release of the location of a small number of CIA installations. In an effort to balance high public interest in the location of CIA installations and the need to protect certain installations, the Review Board decided to establish date "windows" within which it would release CIA installation locations.

The CIA never appealed a Review Board vote to the President.

g. CIA prefixes (cable, dispatch, field report).

i. Review Board guidelines. CIA cable, dispatch, and field report "prefixes" are identifiers that CIA uses on its communications to indicate the installation that generates a particular message. Where the Review Board had voted to release the location of a particular CIA installation, the Review Board also voted to release CIA cable, dispatch, and field report prefixes that the installation generated. Likewise, the Review Board protected cable, dispatch, and field report prefixes where it voted to protect the location of the CIA installation.

The Review Board replaced the prefixes that it protected with substitute language similar to that used for CIA installations. An example of substitute language for CIA prefixes is: "Cable Prefix for CIA Installation in Western Hemisphere 1."

ii. Commentary. Once the Review Board voted to release the location of a particular CIA installation, the Review Board and CIA did not disagree that the Board should release cable, dispatch and field report prefixes.

h. CIA job titles.

i. Review Board guidelines. The Review Board voted to release CIA employees' job titles except when the Board's disclosure of the title might reveal the identity of an individual or CIA installation requiring protection.

ii. Commentary. Although the Review Board did not believe that it should vote to protect CIA job titles, standing alone, it sometimes voted to protect titles if they revealed other information that the Review Board had voted to protect.

i. CIA file numbers.

i. Review Board guidelines. CIA organizes many of its files by country and assigns "country identifiers" within particular file numbers. The Review Board released nearly all CIA file numbers that referred to Mexico City. The Review Board protected the "country identifiers" in CIA file numbers for all other countries with the exception of country identifiers "15" and "19." The Review Board generally released all CIA "201" or "personality" file numbers where the files related to the assassination.

ii. Commentary. The CIA rarely objected to the Review Board's release of its file numbers.

j. CIA domestic facilities.

i. Review Board guidelines. The Review Board released references to domestic CIA facilities where the CIA has previously officially disclosed the existence of the facility. The Review Board did not release information that would reveal the location of domestic CIA facilities where the CIA provided evidence that the facility was still in use.

ii. Commentary. The Review Board rarely encountered the issue of whether to release the location of CIA domestic facilities in assassination records, as CIA officially acknowledges most of its domestic facilities. When the Review Board did vote to postpone the location of CIA domestic facilities, it required the CIA to provide extensive evidence as to why the CIA had to keep the location of those facilities secret.

k. CIA official cover.

i. Review Board guidelines. CIA "official cover" is a means by which a CIA officer can operate overseas in the guise of an employee of another government agency. In *congressional documents*, the Review Board released general information about official cover but protected specific details. With regard to *executive branch documents*, the CIA convinced the Review Board that, while Congress might reveal information about official cover, the executive branch does not generally reveal information about official cover because to do so would damage the national security. Thus, the Review Board sustained CIA's postponements regarding official cover in executive branch documents unless the U.S. government had previously officially disclosed the information at issue.

The Review Board inserted the phrase "official cover" as substitute language when it postponed such information.

ii. Commentary. The Review Board initially considered the issue of official cover to be an "open secret" that was well-known to the public. Thus, they were loathe to withhold such obvious information. The CIA, however, supported its strong objections in briefings and negotiations with the Board, and eventually convinced the Review Board that the harm in releasing information about official cover outweighed any additional information that assassination researchers might gain from knowing details about official cover.

l. Alias documentation.

i. Review Board guidelines. CIA employees and agents use aliases and the CIA creates documentation to support its employees' and agents' aliases. The Review Board released information that revealed that CIA employees and agents used aliases. The Board protected specific details about how CIA documents particular aliases.

ii. Commentary. The CIA argued that it currently uses alias documentation and that aliases are vital to CIA's performance of its intelligence operations. The CIA also argued that the Review Board's release of specific information about alias documentation would not be useful to assassination researchers. The Review Board members accepted CIA's arguments, primarily because they agreed that the public interest in the specific details about alias documentation was low. The Review Board determined that it did not want the CIA to spend a large amount of time gathering evidence in support of postponements that were of low public interest and, thus, it did not require the CIA to provide evidence in support of every postponement relating to alias documentation.

m. Foreign intelligence cooperation.

i. Review Board guidelines. The Review Board postponed references to foreign intelligence cooperation with the CIA.

ii. Commentary. The Review Board vigorously debated the issue of foreign intelligence cooperation with the CIA and demanded extensive evidence and multiple briefings from the CIA on the subject. Though in some instances Board members judged that the information might add to the historical understanding of the assassination, the Review Board, with some dissent, determined that the evidence to postpone the information outweighed this potential value.

n. Human sources in FBI foreign counterintelligence (assets).

i. Review Board guidelines. The Review Board evaluated the need to postpone the identity of human sources in foreign counterintelligence operations on a case-by-case basis. Where the human source was a *foreign national*, the Review Board generally agreed to protect the individual's identity *unless* the individual's connection with the FBI was already known to the foreign government at issue. Where the human source was a *United States citizen interacting with foreign government officials*, the Review Board sometimes released the identity of the individual if the public interest in the name of the asset was high. Where the human source was a *United States citizen interacting with other United States citizens*, the Review Board tended to evaluate the release of the source's name more like other domestic informants.

ii. Commentary. In its position paper, the FBI defined "intelligence source" as "any

individual who has provided or is currently providing information pertaining to national security matters, the disclosure of which could reasonably be expected to result in damage to the FBI's intelligence and counter-intelligence-gathering capabilities."

The FBI offered the following arguments in support of its request to keep intelligence sources' identities secret: (1) Review Board disclosure of intelligence sources would harm the FBI's ability to develop and maintain new and existing sources, because sources would reasonably believe that the government would reveal their identities, and (2) disclosure of intelligence sources may subject the sources, their friends, and their families to physical harm, ridicule, or ostracism.

The Review Board's interpretation of the "clear and convincing" evidence standard required it to reject the FBI's general policy arguments, and instead required the FBI to present asset-specific evidence that explained the particular harm that the FBI expected the asset to face if the Review Board voted to disclose his or her identity. As a general rule, the Review Board usually protected the identities of foreign nationals who could be prosecuted in their home countries for espionage. Likewise, where the asset was a United States citizen interacting with foreign government officials, the Review Board considered whether the individual was in a position of trust with the foreign government and whether he or she might be in danger if the Review Board disclosed his or her relationship with the FBI. Unlike the above-referenced scenarios, the source who was a *United States citizen interacting with other United States citizens* was generally evaluated according to the Board's domestic informant standards.

o. FBI foreign counterintelligence activities.

i. Review Board guidelines. As a general rule, the Review Board believed that most aspects of the FBI's foreign counterintelligence activities against Communist Bloc countries during the cold war period were well-known, were of high public interest, and were not eligible for postponement pursuant to § 6(1)(B)-(C) of the JFK Act.

ii. Commentary and overview of foreign counterintelligence appeals. The FBI's assassination records contain information that reveal many of the FBI's foreign counterintelligence activities during the cold war period. Beginning in late 1995, the Review Board considered how it could release as much information as possible in the records without jeopardizing operations that still require protection.

In spring 1996, the Review Board considered and voted on a group of FBI records relating to the FBI's foreign counterintelligence activities. In response to the Review Board's requests for evidence on the foreign counterintelligence records, the FBI had provided its "position paper" on foreign counterintelligence activities. In its paper, the FBI defined "intelligence activities" as "intelligence gathering action or techniques utilized by the FBI against a targeted individual or organization that has been determined to be of national security interest." The FBI's primary argument in support of its request for continued secrecy of intelligence activities was that disclosure of specific information describing intelligence activities would reveal to hostile entities the FBI's targets and priorities, thereby allowing hostile entities to develop countermeasures.

> *In all cases where the Review Board is considering postponement, it should keep the withheld information to an absolute minimum, and ensure that the postponement is narrowly drawn for the shortest possible duration. In so doing, the Review Board should release as much information from the records as is possible.*
> *—Senate Report on JFK Act, July 22, 1992*

Sections 6(1)(B) and (C) of the JFK Act provided the standard for postponement. In addition, the JFK Act's legislative history instructed the Review Board to consider a variety of factors related to the need to postpone disclosure of intelligence sources and methods, including the age of the record, whether the use of a particular source or method is already well-known by the public, whether the source or method is inherently secret, or whether the information collected was secret.[27]

The Review Board considered the FBI's evidence and weighed it against public interest in the records. After careful consideration, the Review Board decided to release some foreign counterintelligence information. The Board's primary reason for releasing such

13-00000

records was its belief that the FBI's evidence did not enumerate specific harms that would result from disclosure.

A. The FBI's May 1996 Appeals to the President. On May 10 and 28, 1996, the FBI appealed to the President to overturn the Board's vote on 17 records relating to the FBI's surveillance of officials and establishments of four Communist countries—the Soviet Union, Cuba, Czechoslovakia, and Poland—during the 1960s. The FBI's overarching arguments were that disclosure of the information would reveal sensitive sources and methods that would compromise the national security of the United States, and that disclosure of the targets of the surveillance—the four Communist countries—would harm the foreign relations of the United States.

The FBI sought to postpone five types of source and method capabilities: tracing of funds, physical surveillance (lookout logs), mail cover, electronic surveillance, and typewriter and fingerprint identification. The Review Board's response briefs to the President dealt with each source or method in turn. Specific details regarding the appeal of each issue are discussed below.

In response to the FBI's overarching argument that disclosure of the information would reveal sensitive sources and methods and compromise the *national security*, the Review Board responded that if the national security would be harmed by release of this information, the harm would have already occurred, since the FBI had already released both the identities of the target countries *and* the sources and methods that the FBI used in its operations.

In response to the FBI's arguments that disclosure of the targets of the surveillance would harm the *foreign relations* of the United States, the Review Board responded in three parts. *First,* the information that the FBI sought to protect is widely available in the public domain, from both official government sources and secondary sources, so if foreign relations are harmed by disclosure of the information, then the harm has already occurred. *Second,* the FBI simply did not prove its argument that it may have violated international law or "diplomatic standards" by employing the sources or methods at issue since the FBI did not cite the laws or treaties to which it referred and the Review Board could not locate any laws or treaties that were in effect at the time that the records were created. *Third,* despite the FBI's assertion to the contrary, the Review Board had evidence that other governments *do* acknowledge that, in past years, they conducted foreign counterintelligence operations against other countries.

The Review Board believed that the FBI had not provided evidence of a "significant, demonstrable harm" to current foreign relations or intelligence work. Thus, the Board asked the President to deny the FBI's requests for postponement. The White House did not expressly rule on the appeals. Instead, after several meetings involving representatives from the Review Board, the FBI, and the White House, the White House directed the FBI to provide the Review Board with specific evidence in support of its postponements. The White House requested the Review Board to reconsider the Bureau's specific evidence. The FBI, in turn, withdrew the first two of its pending appeals, including some records in which the Review Board voted to release information obtained from a technical source.

B. Post-appeal decisionmaking. After further negotiations, the Review Board and the FBI agreed to release most information regarding its foreign counterintelligence activities against Communist Bloc countries as "consent releases." In those few cases where the Bureau believed that foreign counterintelligence activity against Communist Bloc countries still required protection, the Bureau submitted for the Board's determination postponement-specific evidence.

To the extent that the information in the FBI's proposed redaction did not meaningfully contribute to the understanding of the assassination, the Review Board allowed the FBI to postpone direct discussions of foreign counterintelligence activities against *non*-Communist Bloc countries. With regard to the FBI's "segregated collections," the Review Board stated in its segregated collection guidelines,

> It is presumed that the FBI will, at least partially, carry over its post-appeal stan-

B

13-00000

OGC-92-53256

14 December 1992

MEMORANDUM FOR: Chief, Historical Review Group

VIA: W. George Jameson
Associate General Counsel
Litigation Division, OGC

FROM: Robert J. Eatinger, Jr.
Assistant General Counsel
Litigation Division, OGC

SUBJECT: Declassification Guidelines Established by the President John F. Kennedy Assassination Records Collection Act of 1992

1. The enactment of the President John F. Kennedy Assassination Records Collection Act of 1992 ("the Act") has created declassification guidelines that are to some extent different from the Historical Review Program guidelines established by the Director of Central Intelligence. In the continuing review of material related to the assassination of President Kennedy, the guidelines established by the Act must be used.

2. The Act's most fundamental changes are the burden it creates on agencies to justify continued classification of information, and a requirement that agencies balance the national security concerns against the public interest. Under the Act, information must be declassified unless a showing is made by clear and convincing evidence that release of the information would demonstrably impair the national security.

3. The Act's guidelines for declassification are found in its Section 6 and are as follows:

Sec 6. GROUND FOR POSTPONEMENT OF PUBLIC DISCLOSURE OF RECORDS.

Disclosure of assassination records or particular information in assassination records to the public may be postponed subject to the limitations of this Act if there is clear and convincing evidence that--

(1) the threat to the military defense, intelligence operations, or conduct of foreign relations of the United States posed by the public disclosure of the assassination is of such gravity that

13-00000

it outweighs the public interest, and such public disclosure would reveal--

(A) an intelligence agent whose identity currently requires protection;

(B) an intelligence source or method which is currently utilized, by the United States Government and which has not been officially disclosed, the disclosure of which would interfere with the conduct of intelligence activities; or

(C) Any other matter currently relating to the military defense, intelligence operations or conduct of foreign relations of the United States, the disclosure of which would demonstrably impair the national security of the United States;

(2) the public disclosure of the assassination record would reveal the name or identity of a living person who provided confidential information to the United States and would pose a substantial risk to that person;

(3) the public disclosure of the assassination record could reasonably be expected to constitute an unwarranted invasion of personal privacy, and that invasion of privacy is so substantial that it outweighs the public interest;

(4) the public disclosure of the assassination record would compromise the existence of an understanding of confidentiality currently requiring protection between a Government agent and a cooperating individual or a foreign government, and public disclosure would be so harmful that it outweighs the public interest; or

(5) the public disclosure of the assassination record would reveal a security or protective procedure currently utilized, or reasonably expected to be utilized, by the Secret service or another Government agency responsible for protecting Government officials, and public disclosure would be so harmful that it outweighs the public interest.

4. The Act therefore superseded the guidelines established for the Historical Review Program to the extent the Historical Review Group (HRG) is processing information related to the assassination of President Kennedy. The specific changes are as follows.

a. The most basic change is that <u>you must apply a balancing test before maintaining the classification of any information</u>. You must balance continued classification against the public interest in the information. Therefore, the greater light disclosure of the information would shed on the assassination of the President, or on the

government's investigation into that assassination, the more serious must be the need to continue to withhold the information for classification to be maintained.

b. HR 70-14.e(2) states the reviewers of information advocating continued classification of information will bear the burden identifying any damage that disclosure could reasonably be expected to cause to the national security. The Act defines that burden as one of "clear and convincing evidence." Further, the Act changes "reasonably could be expected to cause" to "demonstrably." Therefore, unless a showing is made by clear and convincing evidence that release of the information would demonstrably impair the national security, the information must be declassified.

c. HR 70-14.e(4) addresses the standards for maintaining the classification of foreign government information, the identity of a foreign source, and intelligence sources and methods. It notes that Executive Order 12,356 presumes that this information is classified. Under the Act, with respect to these categories of classified information found with records related to the assassination of President Kennedy, you must still find demonstrable damage by clear and convincing evidence regardless of the presumption in the Executive Order. Further, with respect to intelligence sources and methods, the Act requires that they--

(1) be either currently utilized or reasonably expected to be utilized by the U.S. Government; and

(2) that they not have been officially disclosed; and

(3) that their disclosure would interfere with the conduct of intelligence activities.

All of these factors must be met by a showing of clear and convincing evidence.

d. HR 70-14.e(4) also discusses CIA personnel and organizational information. The Act only permits the continued withholding of the identity of an "intelligence agent" if, by clear and convincing evidence, it can be shown the person's identity requires protection. Further, the Act does not permit the withholding of organizational information unless, by clear and convincing evidence, it can be shown the disclosure of the organizational data would demonstrably impair the national security.

e. HR 70-14.e(7) states that the HRG will determine whether information warrants continued protection pursuant to statutory or other requirements. The Act supersedes all other statutory authority for withholding information except

13-00000

for a provision of the Internal Revenue Code dealing with tax return information. This means the Act takes precedence over 50 U.S.C. § 403(d)(3) and § 403g, as well as the Privacy Act, when determining whether to release records related to the assassination of President Kennedy. The Act also makes no provision for protecting information on the basis of executive privilege, such as deliberative process and attorney-client communications.

5. Certain categories of information may fall into more than one of the grounds set forth in Section 6 of the Act. We recommend that you review all of the grounds when determining whether to release or withhold specific information. For example, a human intelligence source may fall into grounds (1)(A) ("intelligence agent"), (1)(B) ("intelligence source"), (2) ("living person who provided confidential information to the United States"), and/or (4) ("understanding of confidentiality currently requiring protection between a Government agent and a cooperating individual"). At this point, we do not know how the Assassination Records Review Board will interpret each of these grounds. Therefore, if you determine the standards of the Act are met to permit withholding of certain information, you should assert as many grounds as may arguably apply as authority for that withholding.

cf NARA software — pr... Honey: won't accept authori... for 10/6 redaction

6. Although the Act severely limits what information may be withheld from disclosure, it may be possible to protect information not expressly covered by the Act. However, such information may be withheld only with the personal authorization of the President. When the President signed the Act, he issued a statement that included the following:

> My authority to protect [executive branch deliberations, law enforcement information of the executive branch, and national security information] comes from the Constitution and cannot be limited by statute. Although only the most extraordinary circumstances would require postponement of the disclosure of documents for reasons other than those recognized in the bill, I cannot abdicate my constitutional responsibility to take such action when necessary.

7. The Act provides individuals the ability under the Administrative Procedures Act to challenge in court final decisions of the Assassination Records Board. We can expect, then, court challenges to the Board's decisions to uphold any of our determinations that certain information meets the criteria for postponement of release. Additionally, as you know, there are FOIA litigations for this same material. Plaintiff's counsel has indicated in court pleadings and orally that he wants the court to review our redactions not under FOIA standards, but under the standards of the Act. Thus, you should apply the Act's standards knowing your judgments may be questioned by the Board,

subsequent court challenges to the Board's action, and the FOIA cases.

8. If you have any questions concerning the application of the Act to your review of the assassination records, please call me on secure extension 76105.

Robert J. Eatinger, Jr.

DCI/OGC/RJE:ig 76105/ 15 Dec 1992

OGC-92-53256

Distribution:

1 - Addressee
1 - DO/IRO
1 - DI/IRO
1 - DS&T/IRO
1 - DA/IRO
1 - DCI/IRO
1 - PCS/PGG
1 - ERR
1 - DPH
1 - Lit file
1 - EC
1 - WGJ
1 - RJE Soft file
1 - OGC Chrono
1 - RJE Signer

OGC-94-52916
19 September 1994

MEMORANDUM FOR: David P. Holmes
Deputy General Counsel

FROM: Robert J. Eatinger. Jr.
Assistant General Counsel
Litigation Division, OGC

SUBJECT: DCI Sources and Methods Authority With Respect to JFK Assassination Records

1. Per your request, I have attached a copy of the President John F. Kennedy Assassination Records Collection Act of 1992 (ARCA), Pub. L. 102-526, 106 Stat. 3443-3458, reprinted at 44 U.S.C. § 2107 note. For your convenience, I have highlighted the pertinent provisions that will aid in responding to an inquiry regarding the statute's effect on the DCI's statutory authority to protect intelligence sources and methods.

2. The clear language and intent of the law is to supersede statutes that prohibit disclosure of information, except for some irrelevant subject areas, such as tax records. The statute provides that "it shall take precedence over any other law (except section 6103 of the Internal Revenue Code), judicial decision construing such law, or common law doctrine that would otherwise prohibit" the disclosure of information subject to the Act. ARCA § 11(a). This language, taken with the provisions discussed below which limit the intelligence sources and methods that may be protected and set a strict procedural scheme by which information is to be reviewed under the ARCA, effectively supersedes the DCI's National Security Act authority with respect to intelligence sources and methods information subject to the ARCA.

3. Section 6 of the ARCA provides the grounds for which the release of information may be "postponed." The statute contemplates that all information will eventually be released. Indeed, it specifies that all information will be made available to the public no later than 25 years after the passage of the ARCA (which occurred in October 1992) unless the president certifies that continued postponement is necessary. ARCA § 4(g)(2)(D). With respect to intelligence-related information, ARCA allows postponement if:

> "(1) the threat to ... intelligence operations ... is of such gravity that it outweighs the public interest, and such public disclosure would reveal--

SUBJECT: DCI Sources and Methods Authority With Respect to JFK Assassination Records

(A) an intelligence agent whose identity currently requires protection;

(B) an intelligence source or method which is currently utilized, or reasonably expected to be utilized, by the United States Government and which has not been officially disclosed, the disclosure of which would interfere with the conduct of intelligence activities; or

(C) any other matter currently relating to ... intelligence operations ... the disclosure of which would demonstrably impair the national security of the United States."

ARCA § 6(1) (Emphasis added.)

4. The originating agency is to make the first review to identify information that meets the standards for postponement. ARCA § 4(c)(2)(D)(i). For CIA, this effort is being undertaken by the Historical Review Group, in consultation with the Directorate of Operations and other appropriate Agency components. Information the originating agencies identify for postponement must be transmitted to the Review Board. ARCA § 4(c)(2)(E). The Review Board "shall consider and render decisions on a determination by a Government office to seek to postpone the disclosure of assassination records." ARCA § 7(i)(1). Specifically, the "Review Board shall consider and render decisions on ... whether an assassination record or particular information in a record qualifies for postponement of disclosure under the Act." ARCA § 7(i)(2)(B).

5. If the Review Board determines to order the disclosure of information that the originating agency felt met the criteria for postponement, it "shall notify the head of the originating body of its determination and publish a copy of the determination in the Federal Register within 14 days after the determination is made." ARCA § 9(c)(4)(A). If the information contained in an assassination record is "obtained or developed solely within the executive branch, the President shall have the sole and nondelegable authority to require the disclosure or postponement of ... the information under the standards set forth in Section 6." ARCA § 9(d)(1) (emphasis added). The President's decision must be certified to the Review Board within 30 days of the Review Boards determination. Id. Records postponed by the President must be re-reviewed every 5 years. ARCA § 9(d)(2).

13-00000

SUBJECT: DCI Sources and Methods Authority With Respect to JFK Assassination Records

6. I would be happy to discuss this further if you so desire. You might also want to contact John Pereira (x30373) since he has met with some or all of the Review Board members.

Robert J. Eatinger, Jr.

Attachment

13-00000

SUBJECT: DCI Sources and Methods Authority w/Respect to JFK Assassination Records

OGC-94-52916

DCI/OGC/RJEatinger:76105 (19 Sept 94)

Original - Addressee (w/attach) (hand delivered)
1 - OGC Registry (w/~~attach~~)
1 - Lit File ________
1 - RBB (OGC/ILD)
1 - C/HRG (J.Pereira-404 Ames)
1 - RJE - Soft File (w/attach)
1 - RJE - Signer
1 - PDP
1 - KK -fyi
1 - PAS-fyi

C

Attachment C

Friday, October 29, 1999

Foreign Government Information Contained in JFK Collection

CIA's JFK Collection includes Foreign Government Information (FGI) in a number of forms:

First, some CIA documents in the collection contained FGI but, by general agreement with the Assassination Records Review Board, the source could be protected by redaction even when CIA and the Board agreed that substantive information could be released.

Second, documents were provided by foreign governments in the aftermath of the assassination in response to requests from the US Government for information about the assassination or individuals whose names may have been associated with it. Such documents subsequently became a part of CIA's "sequestered collection" and thus were automatically designated by the JFK Board as "Assassination Records," subject to declassification review. A number of such documents were released in full in the early years of the project (1992-1994), with the concurrence of the DO/IRO, but OIM has no documentation regarding coordination with liaison.

Third, in a number of documented cases, the DO consulted with liaison services regarding documents that were clearly identifiable as from a liaison service, and handling of both the substance and the sources was discussed with the liaison services and their views obtained. In all such documented cases, the BOARD agreed to protect the foreign government source and, as appropriate, to postpone the release of redacted portions or entire documents until the year 2017, reflecting the language of the JFK Act.

The information below reflects those instances of coordination with liaison services that are reflected in OIM records:

Australian

1. (S) A 1968 letter from Charles C. F. Spry, on Australian Security Intelligence Organisation letterhead, to DCI Richard Helms objected to the proposed release of a Warren Commission document in which reference is made to the 'Australian security service.' [The Warren Commission document (CD #97) was a memorandum to Mr. J. Lee Rankin from DDP Helms dated 22 May 1964 reporting an anonymous caller -- who described himself as a Polish chauffeur for the Soviet Embassy in Canberra -- to the US Embassy there. That memo was sanitized to delete the 'Australian security service.'] The Board did not accept the Agency's initial action to "deny in full" Sir Spry's letter and the Board's acceptance of substitute text provided only additional time to pursue the possibility of full release. Consultations between and among EA/PAMSI, OGC, and others and queries to the Australian desk, and, in turn, the Station and the Australian Government brought an acceptable compromise. ASIO authorized the release of a redacted and retyped version of Sir Spry's letter that did not reveal Sir Spry as the writer and that did not reveal an ASIO/CIA relationship, and ASIO further stated "this . . . should not be seen as setting any precedent in releasing ASIO documents." The Board postponed release of the original until 2017.

2. (S) Helms' response to Sir Spry and two related CIA documents were released in sanitized form that protected the liaison relationship. The release of the redacted portions are postponed until 2017.

3. (S) Cables exchanged between Headquarters and Canberra over the issue in Item 1 were declared assassination records, but release of the cables was postponed until 2017.

LIA 2-82
X5
1.5d

British

1. (S) The BOARD wanted to release the 1963 British Security Service's (BSS) interview of the spouse of a West-East defector (Sloboda). The BSS advised the Station that release would be a violation of *privacy rights in the UK.* The BOARD agreed that the document was "not intrinsic to assassination story" and that the document could be postponed until 2017.

2. (S) Another British document in the collection provided information that as of 1982 "KOSTIKOV . . . was posted in Beirut in 1978 . . . and may still be there." (The author EPSTEIN in *Legend* claims KOSTIKOV was Lee Harvey Oswald's KGB case officer in Mexico City.) The British desk accepted the release of the one pertinent paragraph (one of five paragraphs in the document), and the Board agreed to postpone until 2017 the release of all other text and source originating information.

3. (S) The BOARD learned of the existence of a British document that the CIA possessed from the BOARD's examination of FBI files. One member of the BOARD reviewed the entire document and declared one portion of the document as relevant to the JFK assassination. The four-page section of the document regarding KGB Active Measures was released in full and further noted that it was from a foreign government that specifically requested not to be identified.

Canadian

(S) A report received through Canadian liaison channels on West-East defectors (Martin and Mitchell) is in the collection. As consultations with the Canadian desk were underway, the BOARD determined the document as not believed relevant and postponed its release until 2017.

Dutch

(S) The BOARD wanted to release two attachments (teltap transcripts) to a dispatch from the Dutch Station. The matter was coordinated with the Dutch desk, the Dutch Station, and the Director General of the Dutch National Security Service. As a result, translation substitutions provide the information from intercepted conversations on the topics of "Mr. Lee (sic)" and Richard Gibson, but redactions obscure the source of the transcripts, according to guidelines in a letter from the service. Release of the redacted portions is postponed until 2017.

LIA 2-82
X5
1.5d